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MANUAL

OF THE

LAW OF INSOLVENCY AND BANKRUPTCY

MANUAL

OF THE

LAW OF INSOLVENCY AND BANKRUPTCY:

COMPREHENDING A

SUMMARY OF THE LAW OF INSOLVENCY,
NOTOUR BANKRUPTCY, COMPOSITION-CONTRACTS, TRUST-DEEDS,
CESSIOS, AND SEQUESTRATIONS;

AND THE

WINDING UP OF JOINT-STOCK COMPANIES IN SCOTLAND:

WITH

ANNOTATIONS ON THE VARIOUS INSOLVENCY AND
BANKRUPTCY STATUTES;

AND WITH

FORMS OF PROCEDURE APPLICABLE TO THESE SUBJECTS.

BY

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FOURTH EDITION.

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MDCCCLXXIX.

"In the law of Scotland all harsh and sudden proceedings for the recovery of debt have been restrained by a spirit of forbearance towards the debtor, happily enough combined with precautions for the safety of the creditors."—PROFESSOR BELL.

TO THE

FACULTY OF PROCURATORS IN GLASGOW

THIS VOLUME

IS VERY RESPECTFULLY INSCRIBED BY

THE AUTHOR.

NOTICE.

In preparing the present Edition of the Manual, the Author has compiled the first part of it—in order to avoid repetition—more in the shape of a summary than a digest of the Law of Insolvency and Bankruptcy. And in offering the work again to the Legal Profession, he begs to acknowledge the valuable aid which he has received from Dr Barclay of Perth, Mr M'Jannet of Glasgow, and other friends. He has also to acknowledge the kindness of the Accountant in Bankruptcy in permitting him to publish his highly useful forms and notes; and lastly, to thank Mr Sellar, the Sheriff-Clerk of Lanarkshire, for several practical suggestions and many excellent forms, adapted to the working of Sequestration Law, with which he has kindly favoured him.

Alton-Albany, Girvan,
1*st February* 1879.

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EXPLANATION OF ABBREVIATIONS.

2 B. C. 162.	Bell's Commentaries, 5th edition, volume 2, page 162.
B. P. 255.	Bell's Principles, paragraph 255.
D. 1210.	Morrison's Dictionary of Decisions, page 1210.
D. App. Bt., No. 24.	Morrison's Dictionary of Decisions, Appendix, *voce* Bankrupt, No. 24.
E. 1. 1. 4.	Erskine's Institutes, book 1, title 1, section 4.
F. C.	Faculty Collection of Decisions.
H.	Hume's Decisions.
Jur.	Jurist Collection of Decisions.
3 Mur. 515.	Murray's Jury Reports, volume 3, page 515.
s.	Section.
2 S. (Ap.) 349.	Shaw's Appeal Cases, volume 2, page 349.
1 S. & M. 767.	Shaw and M'Lean's Appeal Cases, volume 1, page 767.
S. 1. 9. 15.	Stair's Institutions, book 1, title 9, section 15.
1. Stuart, 165.	Stuart's Appeal Cases, volume 1, page 165.
5 W. S. 256.	Wilson and Shaw's Appeal Cases, volume 5, page 256.
Par.	Paragraph in the Summary.

N.B.—Where a case is cited without reference to any collection of Reports, it will be found in 'Shaw and Dunlop's Cases,' and continuations thereof.

INTRODUCTION.

A FEW remarks on the working of the Scottish Insolvency and Bankruptcy System of Laws, as well as on the general law of Debtor and Creditor—of which they form a part—will perhaps be useful as a key to the contents of the following pages.

The relation between debtor and creditor is usually constituted, according to the law of Scotland, in these four ways—viz.:

1. *By Consent.*—The obligation may be founded upon consent, and the consent may be in the form of a contract between the parties, or a promise on the part of the debtor, and it is of no consequence whether there has been any value or consideration given for the debt.

2. *By Wrong.*—A debt may be constituted by the commission of a wrong. It may be a wrong done to person, property, or reputation, and, in any of these cases, the wrong-doer becomes a debtor in reparation of the injury done.

3. *By Equity.*—A party becomes a debtor without the granting of consent or the commission of wrong, but simply on principles of equity: *e.g.*, where the goods of another are cast overboard in order to lighten a ship and save the cargo; also where his property is benefited by another party *bona fide* building upon it in the belief that it is his own, and with no view to a donation. In these cases the party benefited is liable in recompense.

4. *By Relationship.*—A debt is incurred by consanguinity

or natural relationship, such as that of parent and child, in the case where the one is unable to support himself while the other is able to support both.

A claim may be established or cut down by three kinds of evidence: 1. By writing; 2. By oath; and, 3. By witnesses.

The debt may in all cases be proved or disproved by writing or oath—*i.e.*, it may be proved by the writing or oath of the debtor, or disproved by the writing or oath of the creditor. But proof by witnesses is more circumscribed; for while, as a general rule, all contracts may be so proved, yet, where there has been no consideration for the debt, it can only be evidenced by the writing or oath of the debtor.

The first mode of proof is incomparably the best; for the possession of a writing—such as a bill of exchange—enables the creditor within a week to put the debtor in prison or attach his goods. No process is required to constitute the debt—the mere possession of such a document puts the debtor, and not the creditor, in the position of pursuer; for if the debtor has any objection to the debt he must raise a process of suspension at his own instance, and before he is allowed to proceed he must, as a rule, consign in court the amount of the bill, or find security for the payment of it. When no such writing exists, but the debt stands on an open account, a regular process for obtaining a decree must be raised by the creditor, during which the debtor may, if he is so disposed, put the creditor to vast expense and trouble: he may take advantage of all the forms of court; he may have a pleading at every stage; he may cause the creditor to prove his whole case; and, in addition to this, the creditor, in such instances, always runs the risk of losing the evidence of his witnesses from death and other causes.

Where the creditor has no such document as a bond or a bill, but requires to raise a law process for the purpose of obtaining such judgment or decree, the result is to put him in the same position practically as if he had had a bond or bill.

This process must be raised in Scotland. In matters of civil jurisprudence, England, Scotland, and Ireland are foreign countries to each other.

The court to be selected depends on the nature and extent of the claim.

The court with the smallest jurisdiction is the Justice of Peace Court; the next is the Sheriff Court; the highest is the Court of Session, which is the Supreme Court of Judicature in Scotland, but subject to the review of the House of Lords.

Where the creditor has raised a process and obtained a decree, or, in the event of his having a bill, where he has it protested, and the protest recorded, and a decree got thereupon, and which he gets as a matter of form upon making application for it, then he proceeds to put the decree in execution against the debtor. Where the debtor is solvent, and is simply unwilling to pay, or dilatory in paying, then the creditor has three remedies—viz.:

1. *Against the Debtor's Person.*—He may put the debtor in prison, where he remains until he pays the debt and costs, or until he is liberated by any of the law processes after-mentioned, raised on the ground of want of aliment-money being paid in by the creditor, or for *cessio bonorum*, or for sequestration. Where the debtor, on his incarceration, has funds sufficient for his support, he supports himself; if he cannot, then the creditor has to provide an aliment for him. The imprisonment of the debtor does not extinguish the debt, and is not only no bar to the creditor attaching his estates at the same time, but does not prevent the creditor from liberating him and thereafter reincarcerating him after a lapse of time or on a change of his circumstances. It may be remarked, that while the creditor is pursuing a process so as to obtain decree, and while he is not yet in a position to put the debtor in prison, he is nevertheless allowed to apprehend the debtor, and make him find security in the case of his intending to leave Scotland to avoid his creditors.

2. *Against the Debtor's Heritable Estate.*—The creditor may raise a process of adjudication so as to attach the debtor's lands and heritages. By this step the Court allows the creditor to enter into possession of the property by himself or a factor, and draw the rents, and ultimately to have it declared to belong to him in satisfaction of his debt; or, by a separate process, he may have it sold for payment. It is here to be re-

marked, that while the creditor is pursuing a process so as to obtain decree to enable him thus to attach these estates, and where he fears that the debtor may sell or mortgage them so as to defeat the creditor's measures, the law allows the creditor to raise an inhibition, which has the effect of preventing such a fraud, and gives the creditor, besides, a preference over all subsequent creditors.

3. *Against the Debtor's Moveable Property.*—The creditor may put the decree in force against the debtor's goods. Where the goods are in his own possession, the creditor sends an officer of Court to poind them, and thereafter to have them sold for the debt and costs. Where the goods are in the possession of a third party, or in the case of book-debts or a bank-account, then an arrestment is used, which has the effect of attaching them in that party's hands, and thereafter a process of forthcoming is raised to obtain the warrant of the Court ordering the money to be handed over to the creditor in payment of debt and costs, or to have the goods sold for that purpose. It has also to be remarked, that while the creditor is pursuing a process for decree, he may get a warrant from the Court at any time to attach the debtor's bank-account or book-debts, or goods in the hands of any third party, in security of his claim.

When the debtor is insolvent it becomes a question for the consideration of the parties interested whether the debtor should have a voluntary settlement with his creditors, or whether he should assign his estates to a trustee for the creditors, or whether he should simply be put in prison and his estates attached by each creditor at his own hand, or whether a sequestration should be taken out for the benefit of all.

The procedure may thus be extrajudicial or judicial. The extrajudicial procedure may be by composition-contract, or by trust-deed.

Where it is desirable that the debtor should carry on his trade, and not be dispossessed of his premises and estates, the obvious course is to carry through a settlement by composition-contract. It may be done in two ways—either by the debtor making a settlement with each creditor individually,

or by carrying through an arrangement with all the creditors. In the former case, the debtor and each creditor will of course arrange what terms of settlement they please. But where it professes to be a *general* settlement, then it must be effected on two principles—viz., that all the creditors are dealt with on terms of *equality*, and that *all* the creditors *concur*. Where all are to be bound, then until all *are* bound, none are bound. Again, where certain creditors have received preferences over others, or promises of such, to induce them to accede to the settlement, the result is simply this—that any creditor may destroy the settlement by a process of reduction, on the ground of fraud; and furthermore, the debtor or his cautioner, in such event, may at any time resist payment of the preference where merely promised, and may sue for repayment of it where it has been actually paid, as all such preferences are absolutely illegal. No advantage is thus gained by any one.

The mode by which the settlement is generally carried through is this:—The debtor, either with or without calling a meeting of his creditors, makes a written offer of a composition of so much per pound, payable within a specified period, with the security of a person named, and agrees to grant bills, along with the surety, for the amount of the composition due to each creditor. With this the debtor calls on the different creditors, and gets them to sign an acceptance of the offer. It is a useful precaution for the creditors to insert a condition that the transaction falls to the ground if not carried out and completed within a given period.

Where the arrangement is carried through, but the debtor fails to pay the composition, then the original debt revives, unless in the case of an *absolute* discharge of the same having been granted at the time of the settlement. Where the debt so revives, the creditor proceeds against the debtor in the same way as if there had been no settlement at all.

The advantage of this mode of winding up an insolvency to the creditors is, that they effect an immediate settlement of the matter at a great saving of expense; while, so far as the debtor is concerned, it prevents the stoppage of his business, it does not dispossess him of his estates, and causes no exposure of his circumstances.

On the other hand, there is a difficulty in carrying out such settlements. Any one creditor may stand out and defeat the whole plan. There are also defects in it. There may be preferences to be reduced, or frauds to be exposed. Furthermore, certain creditors may hold securities over the estate of the debtor, and, notwithstanding this, they may claim a composition upon the whole amount of their debt; while, under a sequestration, they would be called on to put a value on the securities they hold, and deduct the value from the debt, and rank only for the balance.

Where the debtor sees that he cannot carry on, or where he does not wish to carry on, his business, but simply desires to wind up his affairs and distribute everything among the creditors, then he grants a conveyance of all his estates to a trustee for that purpose. This step is one merely for realisation and division of the estates among the creditors, and may be taken by the debtor either with or without a view to his discharge. It is to be remarked that, by the theory of the Scotch law, the estates of a man belong to his creditors from the period of his insolvency; and, consequently, he is only doing a duty which he owes to the creditors to transfer these estates to them simply for payment of their debts. He cannot, therefore, strictly speaking, clog the conveyance with conditions for a discharge of his debts, or for a suspension of diligence. He cannot even prescribe a course of management without their consent. In fact, unless the trust-deed is pure and simple in its terms, as a conveyance to a trustee for winding-up and division of the estates, it may be reduced and set aside by any one of the creditors. But if this is not done, then it is quite good even *with* such stipulations.

The trust-deed may also be set aside by a creditor who had raised, and was pursuing, such legal diligence as would have had the effect of attaching the estate when completed.

It may also be set aside if it was granted within sixty days previous to the insolvent being apprehended, or put in prison, or had his effects sold for debt, or otherwise rendered "notour" bankrupt.

The processes necessary to set aside the trust-deed on any of

these grounds may be raised in the Court of Session or Sheriff Court.

The deed, where allowed to stand, does not, in order to be valid, require the accession of all the creditors. If any creditor stands aloof he may arrest the insolvent and put him in prison, and he may also attach the estate, provided he does so before the trustee takes possession. But if the trustee get the estate into his power, then he realises and divides it among those who claim a ranking, and otherwise comply with the provisions of the trust.

Where the insolvent or the creditors are dissatisfied with the management of the trust, they may get it superseded by a sequestration. The steps necessary for a sequestration will be noticed hereafter.

The granting of a trust-deed does not in any way tie up the hands of the creditors. They may put the debtor in prison, as before observed. The deed does not discharge the insolvent of his debts, even though it contain a stipulation to that effect, unless the stipulation has been specially agreed to by the creditors. It is not enough to bind a creditor to such a stipulation that he has made a claim for a ranking, or even that he has received a dividend. He is quite safe to do either of those things without committing himself to a discharge of his debtor.

Where the trust-deed stands, the trustee proceeds to recover and administer the estate, and, after it is realised, to divide the proceeds among the creditors, in terms of the deed.

Where there has been no composition-contract carried through, and where the insolvency is not to be wound up by means of a trust, then the parties may resort to judicial proceedings for the enforcement of their rights. These proceedings take place in the ordinary law courts. They may consist of competing attachments by the creditors for possession of the insolvent's estate, or steps of procedure for the punishment of his person, or they may consist of processes raised by creditors against creditors to compel them to share their preferences with them, or of processes by the debtor for his own protection. But whatever be the nature or form of these

common-law processes, the object of each party in having recourse to them is his own individual interest, and none of them aim at any system of management or distribution of the insolvent's estate for the common benefit of the creditors.

1. *Proceedings by the Creditors against the Debtor.*—The proceedings by the creditors against the debtor may be with the view to concussing him into giving payment or security by means of imprisonment. They may, however, intend the proceedings against his person as the means of enabling them to apply to the Court for sequestration of his estates. This they cannot do until they render him "notour" bankrupt by some such step as the apprehension of his person or sale of some part of his estate. The debt of any one creditor must be £50, to enable him to apply for sequestration, as aftermentioned.

The proceedings may be against the debtor's heritable estate. It may be the creditor's intention to attach it for himself, or if it has been attached within a year and day previously by any other creditor, it may be his object to come in with that creditor for a share in the estate.

The proceedings may be against the debtor's moveable estate. The object of the creditor may be to attach it for himself, or, in the event of its having been attached by any other creditor within sixty days previously, then he may claim to participate in the proceeds of the estate with that creditor.

2. *Proceedings by one Creditor against another.*—Where the creditors, instead of attacking their debtor, proceed to attack one another, it is with the view of setting aside any preferences which the debtor may have granted to any particular creditor, or which that creditor may have secured by legal attachment, and of enabling the creditors aggrieved to participate in the subject of the preference. This mode of equalising the rights of creditors is old-fashioned. It had its origin before sequestration-law had any existence; and as it is expensive and dilatory, as well as unsatisfactory where adopted by individual creditors, it is seldom resorted to, except by the trustee under a sequestration for the benefit of all the creditors.

The first of these processes which may be so raised by a trustee or by a single creditor, is one to bring back any pro-

perty of the debtor which has been assigned to a creditor in security of his debt, while that other creditor was prosecuting legal measures to attach it, and which measures, when carried out, would have had the effect of so attaching it. If the creditor who has been so defeated in his attempt to reach this property is the party who sues for restitution, then he retains it for himself. If the trustee in a sequestration is the party who sues, then he recovers it for the benefit of all the creditors.

The second of these processes, which may be also raised by a trustee, or by a single creditor, is one to bring back any property of the debtor which may have been assigned to a creditor in security or satisfaction of his debt, within sixty days before his sequestration, or before he was apprehended or imprisoned, or before any of his effects were sold, or before he was otherwise rendered "notour" bankrupt. When recovered, the property goes to the creditor who sues, or to the trustee in a sequestration where he is the party who sues.

The only other of these processes is similar to the one last above-mentioned. It may also be raised by a single creditor, where a trustee in a sequestration does not do so, and the object of it is to bring back from a creditor any subject or fund which he may have attached by legal proceedings for his debt within the above-mentioned sixty days. The object in both cases is the same—to allow no creditor within sixty days prior to an act of bankruptcy to obtain any preference, either by the voluntary deed of the debtor or by the operation of the law.

3. *Proceedings by Debtor for his own Protection.*—The debtor, of course, cannot by any legitimate means protect his property from his creditors; but he may, by certain processes, not only protect his person from imprisonment, but obtain a discharge of his debts.

He may, *in the first place*, when put into prison for debt, apply for liberation unless the creditor furnishes him with aliment. This the creditor is not bound to do where the debtor is able to provide for himself; and where the creditor has to do it, he is entitled to insist upon getting a conveyance to himself from the debtor of all his estates for behoof of his creditors.

The debtor, *in the next place*, may apply, by means of a process of *cessio bonorum*, for liberation from prison, and for protection against arrest of his person. The issue in this process is, Whether the debtor's conduct is such as to disentitle him to the privileges of liberation and protection? If he has been guilty of fraud, or extravagance, or concealment of funds, his petition is refused. If granted, his estates are assigned over to a trustee for distribution among the creditors. The decree in this process does not free the debtor of his liabilities.

Lastly, The debtor may, by raising a process for bringing about a sequestration of his estates, obtain not only liberation from prison and protection from arrest, but ultimately a discharge of his debts. To enable him to sue out a sequestration, he requires the concurrence of a creditor to the extent of £50, or two creditors whose united debts amount to £70, or three or more creditors whose debts in all are not less than £100. He applies to the Court of Session or Sheriff Court, and in practice has no difficulty in getting the sequestration awarded where the statutory forms are observed. He has also no practical difficulty in obtaining personal protection until the first meeting of his creditors under the sequestration, unless some creditor anticipates his application, and goes forward to the Court and sets forth a *prima facie* case against his obtaining protection, in which event it will be refused. But in regard to liberation from prison he has more difficulty: notice of his application has to be given to the incarcerating creditor, and then a hearing takes place in Court. As a rule, it is not then granted if the creditor appear and state grounds of opposition; for the Court at this early stage of the proceedings will hardly venture to disturb the *status quo* of parties. It will be postponed till the first meeting of creditors, when it will be seen whether they vote him protection or not; as if he does not get protection from arrest, it is plain that liberation from prison will be of no avail. Instead, however, of being merely postponed, the application for liberation will at once be refused, if a *prima facie* case is made out against liberation—*e. g.*, that the debtor has been guilty of fraud, or has kept no business-books although he was a trader.

The debtor's object, however, in obtaining sequestration,

may be defeated by any of the creditors applying for recall. This may be done within forty days after the sequestration has been awarded, upon cause being shown. It may also be recalled at any time within three months from its date, where a majority of the creditors reside in England or Ireland, and where, from the situation of the debtor's property, or other causes, his estates ought to be distributed according to the laws of either of these countries. When recalled, matters practically exist as if no sequestration had ever been awarded.

Such is a summary of all the various modes of dealing with insolvencies and bankruptcies in Scotland, with the exception of sequestration. In comparing the above judicial with the extrajudicial modes, a preference falls to be given to the latter in every way. Where a private composition-contract is carried through, or even where a trust-deed is executed, the creditors have some prospect of money; but where there is merely a race between creditors to attach the debtor's estate first, or, perhaps, a struggle who are to keep it or share in it when it is secured by some one, and all these points are to be settled in separate lawsuits in the ordinary law-courts, it is obvious that the costs must, in the ordinary run of cases, swallow up most of the proceeds.

The only process which professes to recover, realise, and distribute the estates of bankrupts in Scotland upon equitable principles, is sequestration. As already mentioned, it may be raised by the creditors or the debtor. Where raised by the creditors, it may be at the instance of one creditor of £50, or two creditors of £70, or three or more creditors of £100. When at the instance of the debtor, he must have the concurrence of such creditors. Whether brought about by the one or the other, the subsequent procedure in the sequestration is the same.

The sequestration-system of Scotland has a regular constitution. When sequestration has been awarded, and the bankrupt divested of his estates, they at once come under a threefold system of management and control. The first governing is the trustee. He has the executive department. He alone has power to act; but he has a council of creditors to advise with him. They are three in number, and are

called commissioners. The trustee and commissioners are subject to the control of the creditors. The next governing body is that of the creditors. They form a deliberative assembly, and have corporate privileges. The majority rules the minority, but their proceedings are subject to the control of the Court. The last power in the system is the Court. It may be the Court of Session or Sheriff Court, whichever is selected. The judicial power overrides the power of both trustee and creditors. The function of the Court is control, and is only exercised on the complaint of some one, or in cases of appeal. The decisions of these courts are subject to review in the usual way.

In the ordinary working of the sequestration-system there are eight different steps of procedure—viz.:

1. *The Interim Preservation of the Estate.*—The trustee cannot be elected and ready to take the management of the estate sooner than a week after sequestration, and if there is competition for the office it may be a longer period. In the mean time any creditor may apply to the Court for the appointment of a judicial factor to take the management. An order may also be got to have the bankrupt's premises locked up, and his books and papers secured.

2. *A Deed of Arrangement.*—It may be the wish of the creditors to stop the progress of the sequestration without even the appointment of a trustee. In that case, a majority in number and four-fifths in value of the creditors who have produced their oaths and vouchers, and who are present or represented at the first meeting, may resolve that the estate should be wound up under a deed of arrangement, and in that case no trustee need be elected. An application is then made to the Court to stay procedure in the sequestration for a period not exceeding two months. Thereupon a deed of arrangement between debtor and creditors is prepared, and which may consist of a mere composition-settlement; and if it is signed by four-fifths in number and value of all the creditors, and presented to the Court, it will be passed, and confirmed as binding upon every one, whether he has signed or not. The terms of the deed fix and determine the rights and liabilities of all parties.

3. *Election of Trustee.*—If a deed of arrangement is not to be carried through, then a trustee falls to be elected. The meeting of creditors to elect the trustee is advertised in the London and Edinburgh Gazettes, and takes place not earlier than six nor later than twelve days from the date of the 'Edinburgh Gazette' notice. It takes place in some public hall. At this meeting those creditors vote who have produced their oaths and vouchers, and the majority in value decides the election. The creditors elect a fit person to be trustee, who may be a creditor or a stranger. He must not, however, be intimately related to the bankrupt, or connected with him in his business, and he must not have any interest adverse to the interest of the general creditors. He finds security for his intromissions and management, and the creditors fix both the amount of the security as well as the sufficiency of the person offered. The creditors also elect three commissioners to assist the trustee with their advice in the administration of the estate. They must be creditors, but they find no security; and any one who is not qualified to be a trustee cannot be a commissioner. Where there is any difference of opinion among the creditors as to the election of the trustee or the commissioners, then it falls upon the Sheriff to decide such questions, which he is empowered to do without appeal.

4. *Recovery and Realisation of Estate.* — As soon as the trustee is elected, and receives his act and warrant from the Court, he proceeds to recover the estate. He makes up a title to the real estates; he takes possession of the personal estates; and he sues for outstanding debts. To enable him to do this, he applies to the Sheriff to name a day for the public examination of the bankrupt, and of all others who can give information in regard to the estate. The Sheriff presides at the examination, and the trustee, as well as any creditor, are entitled, with permission of the Sheriff, to put all lawful questions to the bankrupt or such other persons, in regard to the affairs of the bankrupt, which they are bound to answer to the satisfaction of the Sheriff, under the penalty of commitment to prison. The trustee then prepares for the second meeting of the creditors. He makes up a report upon the state of the bankrupt's affairs, and giving an estimate of

what the estate may produce. This report he lays before the meeting, so that the creditors may give him directions as to the recovery, management, and disposal of the estate. The trustee then acts with the advice of the commissioners, but subject to the directions of the creditors, and in all cases under the higher control of the Court.

5. *Composition-Contract and Discharge of the Bankrupt.*—While the trustee's administration goes on, the sequestration may be brought to a close by the carrying through of a settlement by composition; but it has to be remarked that the trustee does not cease to act until it is finally completed. The bankrupt may make the offer at the first meeting, and he must at the same time offer security for payment of the composition. It cannot, in any case, be carried at one meeting—it must be entertained for consideration at one meeting and carried at another. When made at the first meeting, it requires a majority in number and nine-tenths in value present or represented at the meeting to entertain it. If it is entertained by the majority, then the trustee publishes a notice to that effect in the 'Edinburgh Gazette,' and also sends circulars to the creditors setting forth that an offer has been so made and entertained, and that it will be finally disposed of at the second meeting of the creditors, and stating the hour, day, and place, of such meeting, and giving an abstract of the state of the affairs and of the valuation of the estate, to enable the creditors to judge of such offer and security. And at the second meeting, a similar majority in number and nine-tenths in value of the creditors must carry the offer, else it is lost. Where the offer is not made till the second meeting, then in that case, and in all other cases, it may be entertained at the first, and carried at the second meeting, by a majority in number and four-fifths in value of the creditors. And in order not to disturb the progress of the sequestration and create unnecessary trouble and expense, the Statute prohibits a bankrupt, in the case of an offer having been rejected or become ineffectual, from making a second offer, unless he first get the written assent of nine-tenths in number and value of all the creditors to the offer. Where the offer is carried in any of these cases, the bankrupt and his surety

lodge a bond for the composition, which is registered. The trustee reports the proceedings to the Court, and any creditor is entitled to go forward and object to the offer, and ask the Court to reject it, which the Court is entitled to do where the offer has not been duly carried, or where it is not reasonable. If the Court find that the offer has been duly carried and is reasonable, then the bankrupt appears and makes a declaration or oath that he has surrendered everything to the creditors, and has been guilty of no improper conduct in carrying through the offer. Upon this, the Court awards him a discharge, which has the effect of freeing him of his debts, reinvesting him in his estates, and terminating the sequestration.

6. *Division of the Estate.*—If no composition-settlement is carried through, then the realisation of the estate goes on with the view to distribution among the creditors. To entitle any creditor to participate in the division, he must lodge in the trustee's hands, within four months from the date of the sequestration, an oath to his debt, with all the vouchers in his possession necessary to prove it. If the vouchers are not in his possession, he states on his oath where they are; and in that case, and also in the case of his claim not being dependent on vouchers, then a dividend is set apart for him until he recovers the vouchers, or otherwise establishes his debt, according to law. But to creditors out of the United Kingdom, the period of four months is extended to five months; and where any creditor is too late for any dividend, he may claim for the next dividend, and in that case he is entitled to such a sum as will equalise his dividend with that of the other creditors. On the oaths of the creditors being so lodged, the trustee, in the capacity of a judge, examines them and pronounces a deliverance, admitting or rejecting them as claims for a ranking, or perhaps requires farther evidence in support of them. He then gives notice of the result of his scrutiny to the different creditors, and if dissatisfied, any of them may appeal to the Court, in order to get the trustee's deliverance altered. If not appealed against, then it is final, so far as the first dividend is concerned. While this procedure is going on, the trustee is also engaged preparing his

accounts with the estate, which he lays before the commissioners to be audited. They also fix his remuneration, and decide whether a dividend is to be made or postponed. If there is to be a dividend declared, then the trustee prepares a scheme of division, and gives notice to those creditors entered therein of the amount of their dividend. On the expiry of six months from the date of the sequestration, the dividends are paid to the creditors entitled to them, and in the case of appeals, or of any claims being contingent, the dividends in these cases are meantime consigned in bank. The same process is gone through every three months—unless the periods of the various dividends are accelerated or postponed—until the estate is entirely divided. At the end of twelve months, however, a meeting of the creditors may resolve to expose the whole estate to auction, and so wind up the sequestration.

7. *Discharge of the Bankrupt without Composition.*—Where the bankrupt is not discharged by means of a composition-contract, but allows the estate to be realised and divided in the manner above-mentioned, then he is at liberty to petition the Court for his discharge. With that view he applies to the trustee for a certificate as to his conduct, and without this he cannot proceed. He thereupon gets the consent of his creditors to his petition; and if the whole of them who have produced their claims in the sequestration concur in the application for a discharge, he may petition the Court at any time for it. If he postpone the application until the expiration of six months from the date of the sequestration, he requires the concurrence only of a majority in number and four-fifths in value of the creditors who have claimed. At the expiration of twelve months he requires the concurrence only of a majority in number and two-thirds in value; at the expiration of eighteen months he requires only a majority in number and value; and at the end of two years he requires no consent at all. He then presents a petition to the Court for a discharge, and an order is given for a notice to that effect being inserted in the 'Edinburgh Gazette,' and for a letter being sent to each creditor; and at the distance of twenty-one days, the Court, after hearing any objections by

opposing creditors, grants or refuses the discharge, or defers the consideration of the petition, and may annex such conditions to the discharge as it thinks proper.

8. *The Trustee's Discharge.*—After a final division of the funds, the trustee calls a meeting of the creditors to declare their opinion as to his conduct as trustee. He thereupon applies to the Court for a discharge in the usual way.

Such is the sketch of the working of a sequestration. A summary will now be given of the rights and powers as well as the duties and liabilities of the bankrupt, the creditors, and the trustee; and also the functions of the Accountant in Bankruptcy, and of the Court.

1. *The Bankrupt.*—The personal status of the bankrupt is not directly affected by the sequestration to any great extent. His person is at his own disposal, except that he is bound to be at the trustee's service in so far as to assist him in every way in the execution of his duties, and also to attend for examination, and grant all necessary deeds. The sequestration divests him of his property, but does not affect the other ties and relations of life—such as that of husband and wife, or parent and child; nor such official positions which the bankrupt may hold—as judge, or clergyman, or sheriff-clerk; nor a private office—such as trustee, factor, or director. He does not cease to be a peer, and it is not quite free from doubt whether he could be deprived of a seat in the House of Commons. His electoral qualification, however, is lost. In regard to any of the industrial or commercial relations of life, all those founded on property are dissolved—such as landlord and tenant, or buyer and seller; while those not so founded on property will continue—such as master and servant, or principal and agent.

The bankrupt may, nevertheless, hold property—such as property which has been vested in him to the exclusion of the creditors, or any ready cash in his own possession, although even these may be indirectly reached by the remedy of imprisonment, or the refusal of a discharge. He also takes up any subject which the trustee rejects, and he retains all necessary wearing apparel. He may, after sequestration, proceed to acquire property; but the trustee may step in,

and, by a process in the Court of Session, seize all such acquisitions and all successions that may open to him before his discharge. The salaries of all public offices may be attached so far as not alimentary, and even Government pensions may now be reached. The trustee may also get an order on the officials of the post-office to deliver up the bankrupt's letters to him. The bankrupt, however, retains all honours and dignities, and also the copyright of all unpublished literary compositions.

He has also certain powers and privileges. He has, of course, no power over the estate generally, and no power to sue in any court regarding it, except in the case where the trustee has no right to the particular estate, or has abandoned it. In these cases the bankrupt may sue, but not until he find security for costs. Where, however, he is called as a defender in a suit, he does not require to find such security. He has the power to apply for or oppose sequestration, or petition for recall. He may apply for liberation from prison, or for a discharge. He may carry a composition-settlement, and call the trustee to account. He may appeal to the Court against the resolutions of the creditors, and against all deliverances of the trustee and commissioners, and may also complain against them by petition.

The principal duties of the bankrupt are—to surrender his whole estate to the trustee—to give him every information and assistance in the recovery and management of it—to grant all deeds necessary to vest it in him—to prepare a state of his affairs, and deliver the same to the creditors at the first meeting—to undergo a public examination as to his affairs—and also to notify to the trustee his acquisition of or succession to any estates during the currency of the sequestration, so that the trustee may proceed to attach them.

The bankrupt is subject to commitment to prison if he fail to give such information or assistance to the trustee, or to grant such deeds, or to answer all lawful questions at his examination, or deliver up all his documents. He is also subject to a criminal prosecution if he is guilty of fraud; and to incarceration as a debtor at all times where he has got no protection. His discharge will also be annulled if he has been

guilty of granting or promising preferences to creditors to induce them to assent to it.

2. *The Creditors.*—A creditor has no voice in a sequestration until he has made an oath or affirmation to the verity of his debt, and produced the same, along with the necessary accounts and vouchers thereof, in the hands of the trustee or at a meeting of the creditors. Till this is done he can neither vote nor draw a dividend.

At meetings of creditors, the majority *in value* (except in special cases) settle and determine all questions regarding the estate, subject, of course, to appeal. The first meeting that takes place is fixed by the Court when awarding sequestration, and it is advertised both in the London and Edinburgh Gazettes. All subsequent meetings are advertised in the 'Edinburgh Gazette' only, and no special notices of any meetings are sent to the creditors except of the second meeting, and of any meeting for finally disposing of an offer of composition. The first meeting is always held in some public hall, the other meeting being usually held in the trustee's chambers.

The creditors, as an aggregate, have the entire beneficial right and interest in the estate, but only through their trustee. No single creditor has any right or power over it. Any creditor is entitled to inspect the sederunt-book and papers in the trustee's hands, unless in the case of any documents of a confidential nature. Any creditor may also object to the sequestration, or appeal against it, or apply for recall of it. He may also object to the election of trustee or commissioners, and to an offer of composition, or to a deed of arrangement. He may also appeal against the resolutions of any meeting of creditors, or against the deliverances of the trustee or commissioners. He is also entitled to vote at all meetings of the creditors, and that either personally or by proxy. He is also entitled to his dividends from the trustee. He has various remedies against the trustee. He may call the trustee to account for his management. No single creditor, however, can apply for his removal unless in the case of his not lodging the moneys of the estate in bank, or of his failing to return each year to the Clerk of Court a statement of the posi-

tion of the estate. In all other cases it requires a majority of one-fourth in value of the creditors to apply to the Court for his removal on cause shown. Of course a majority in value of the creditors at any meeting may remove him without assigning any reason. But a single creditor has this remedy —he is entitled to complain to the Accountant in Bankruptcy that the trustee is not faithfully performing his duties, and duly observing all rules and regulations imposed on him by Statute or otherwise relative to the performance of those duties; and the Accountant is bound to inquire into the same, and he may report to the Court of Session, which has the power to censure the trustee, or remove him from office, or deal with him as the justice of the case may require.

Where the creditors merely lodge their claims and exercise their statutory right of voting, they in general incur no responsibility. They are not liable, by so doing, either for the costs of the sequestration or the obligations of the trustee. It must be kept in view, however, that in causing the trustee to act in any matter, they will incur personal liability if they have instructed him to go beyond the limits of the Statute in any way.

3. *The Trustee.*—The trustee's right extends to all the bankrupt's property. He takes it subject generally to such qualifications and burdens as existed in the right held by the bankrupt. In the case of ordinary moveable rights, the trustee requires no title except his act and warrant; but in the case of registered property—such as lands, ships, patents, &c.—he must, in order to cut out the claims of third parties who may have incompleted rights to such property, have his title formally made up in terms of law.

The right to the estate being vested in the trustee, he has full power to take possession of it, and to recover, manage, and realise it. To enable him to recover the estate he may call on the bankrupt to grant all manner of assistance and information; and he can have the bankrupt and any others who can give information on the subject examined upon oath in open Court. In the capacity of manager, the trustee has the power to bind the estate. He has also the power to sell it, but he cannot himself become the purchaser. In distributing

the estate, he sits, in the first instance, as judge upon the claims of the creditors, and has all the powers necessary for that purpose. But in that and in every other capacity he is subject to the control of the Court; and in all matters of management he acts with the advice of the commissioners, and conform to the instructions of the creditors. He has also a right of appeal in all cases—from the deliverances of commissioners, the resolutions of creditors, and the decisions of the Court.

The general duties of the trustee are—to recover and take possession of the bankrupt's estate—to manage and realise the same—and, when converted into cash, to divide the proceeds among the creditors according to their several rights and interests. He has also a great many minor duties—*e.g.*, he must regularly lodge the moneys of the estate in bank; he must keep a sederunt-book, patent to the creditors, in which the accounts and proceedings of the estate are recorded; he prepares a report upon the state of the bankruptcy to the second meeting of creditors; he keeps regular accounts of the affairs of the estate, and transmits a copy to the Accountant in Bankruptcy, &c. &c.

The trustee is bound to perform all the duties imposed on him by the Statute, and incurs the following liabilities for non-performance—viz.: 1. Censure by the Court; 2. Removal from office; 3. Pecuniary penalties; 4. An action for implement; and, 5. Damages to the party injured. He may also incur personal liabilities if he enter into a lawsuit or a contract, or commit a wrong against any one. In such cases he may have recourse against the estate where he has acted within the limits of the Statute; but if he has gone beyond them, he has only recourse on any creditor who may have specially authorised him to do so.

The Court of Session or Sheriff may, at the suit of any creditor, remove the trustee, and find him entitled to no remuneration where he has improperly retained the funds of the estate in his own hands. The Court of Session or Sheriff may also entertain a petition against the trustee, at the instance of any one interested, to compel him to account for his intromissions and management; but it is the Court of Session

alone which can remove or censure the trustee for general misconduct. The Accountant in Bankruptcy, at his own instance, or at the instigation of any creditor, may apply to the Court of Session and have the trustee removed from office, or have him censured. Also, one-fourth of the creditors in value may apply to the Court of Session for his removal upon cause shown. Where any claim is to be enforced against the trustee, it will fall to be done in the ordinary way.

4. *The Accountant in Bankruptcy.*—The office of Accountant is one of considerable importance to the Scotch system of bankruptcy. He keeps a record of the proceedings in every sequestration in Scotland; he superintends the conduct of the trustee and commissioners; he receives the complaints of creditors against these officials; and he reports to the Court of Session with a view to censure, deprivation of office, or such other punishment as the Court may deem proper.

5. *The Court.*—The Court of Session within Scotland, and the Sheriffs within counties, have concurrent jurisdiction in processes of sequestration. Their jurisdiction generally is co-equal, except that in processes for recall of sequestration, and for removal of trustee on default, and in cases beyond the express provisions of the Statute, the Court of Session has exclusive jurisdiction. In the Court of Session the Inner House sits on sequestration cases during session; the Lord Ordinary on the Bills during vacation. In the Sheriff Court, either the Sheriff or his Substitute may be the judge, but there is no appeal from the one to the other. The functions of the judges and forms of procedure are similar in both Court of Session and Sheriff Court. These Courts exercise control over the proceedings in sequestrations, but they only act in cases of appeal from the deliverances of commissioners or trustees, or from the resolution of creditors, and, in cases of written complaint, against any of the parties in the bankruptcy—*e.g.*, the judicial factor, commissioners, trustee, creditors, or bankrupt. As a rule, any party aggrieved may, after appealing as above to the Sheriff, carry the appeal to the Court of Session, and afterwards to the House of Lords.

PART I.

SUMMARY OF THE LAW OF INSOLVENCY AND BANKRUPTCY.

MANUAL

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LAW OF INSOLVENCY AND BANKRUPTCY.

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SUMMARY OF THE LAW OF INSOLVENCY AND BANKRUPTCY.

CHAPTER I.

INSOLVENCY.

SECT. 1.—DEFINITIONS.

(1.) *Of Insolvency in a Question with Debtor.*

DEFINITIONS.

1. WHERE a man is unable to fulfil the obligations which he has undertaken, and according to his undertaking, he is insolvent. (2 B. C. 162.)

Cause of insolvency.

2. It is of no consequence what the insolvency arises from, whether from an absolute deficiency, or from his estates being simply unrealisable, or from his affairs having got into a state of complication or confusion; nor is it of any consequence that his estates will ultimately be solvent when markets rise or fall, or when particular works or contracts are finished. (Ibid.)

Overt acts.

3. The inability of the debtor to fulfil his engagements may be demonstrated by overt acts, as by—1. The dishonour of a

DEFINITIONS.

bill past due, or the refusal or failure to pay any admitted or constituted debt; 2. A suspension of payments generally; 3. The calling of a meeting of his creditors; or, 4. The execution of a trust-deed or conveyance *omnium bonorum*. (2 B. C. 162 and 163.)

Effects infra.

4. In a question with the debtor, any one of these acts makes him insolvent to the effect of justifying stoppage *in transitu* (*vide infra*), and likewise, with other requisites (Act 1696, c. 5; Act 1856, s. 7), of constituting notour bankruptcy. (2 B. C. 168.)

(2.) *Of Insolvency in a Question between Creditors.*

When inadequate to meet liabilities.

5. The estates of a debtor are insolvent, which, when fairly estimated, are inadequate to meet his liabilities. (A *v.* B, 17th Nov. 1837; F. C.)

Effects infra.

6. A debtor thus insolvent cannot make gratuitous alienation of his property, nor grant preferences to his creditors. (*Vide infra.*)

(3.) *Of Insolvency in a Judicial Sale and Ranking.*

Of insolvency in judicial sales.

7. A debtor's heritable estates are insolvent where the interest of the debts and the other annual burdens thereon exceed the yearly income of the property. (Judicial Procedure (Scotland) Act 1856, cap. 91, s. 3.)

Effects infra.

8. Insolvency in this sense justifies the raising a process of judicial sale. (*Vide infra.*)

SECT. 2.—EFFECTS OF INSOLVENCY.

(1.) *Does not* per se *Incapacitate from Transacting.*

DOES NOT PER SE INCAPACITATE.

9. Insolvency does not incapacitate any one from purchasing goods, or transacting any kind of business, nor from taking delivery of goods (1 B. C. 244; *vide Richmond*, 26th Jan. 1854); nor from suing in a court of law, without finding security for expenses (*Weir*, 18th Oct. 1876).

But resolution to abandon does.

10. But he cannot transact after taking a final resolution to abandon everything to his creditors (1 B. C. 245); and accord-

ingly, in one case where he had suspended payments and called a meeting of his creditors (*Schuurmans*, 9th July 1828), and in another where he had granted a mandate for sequestration (*Watt*, 20th Feb. 1846), the transactions were held fraudulent, and the creditors were obliged to restore the goods to the sellers. DOES NOT PER SE INCAPACITATE.

11. On the occurrence of insolvency, the seller may retain the goods or stop them *in transitu*. (1 B. C. 205 and 212; *Stoppel*, 15th Nov. 1850.) Stoppage in transitu

(2.) *Insolvent cannot make Gratuitous Alienations by Common Law.*

12. The question is one simply of fraud (2 B. C. 197)—the issue sent to the jury in such cases being, whether the alienation under challenge was granted by the debtor fraudulently, to disappoint the legal rights of his creditors (*M'Cowan*, 6th July 1852; *Wilson*, 20th Dec. 1853; *Dobie*, 22d Nov. 1854). The basis of the fraud is, that after insolvency the debtor's funds are no longer his own, but belong to his creditors (2 B. C. 182; 1 B. C. 8). GRATUITOUS ALIENATIONS AT COMMON LAW. Question of fraud. Basis of the fraud.

13. It will be sufficient evidence of the fraud that the debtor knew that his circumstances were, or believed that they might be, in a state of insolvency, and that in consequence of this knowledge or belief he granted the alienation under challenge. (*M'Cowan*, 10th March 1853; *M'Ewan*, 30th May 1828.) Evidence of fraud.

14. Fraud on the part of the receiver of a gratuitous alienation, or collusion between him and the debtor, is not necessary; it is not necessary that he should even know of it. (*M'Cowan*, 6th July 1852; 10th March 1853; *vide Forsyth*, 8th July 1863.) Fraud on part of receiver not necessary.

15. Insolvency of the debtor at the date of the challenge, as well as at the date of the alienation, is necessary to the challenge (2 B. C. 197; *vide M'Cowan, Wilson*, and *Dobie, supra*). But this may not be necessary where the alienation is to others for behoof of the debtor himself directly or indirectly (*Roseberry*, 1st July 1823). Insolvency necessary.

16. Non-onerosity is also necessary (2 B. C. 197). It is of no consequence, where the alienation is by deed, that the deed bears the consideration to have been onerous (ibid.) Non-onerosity.

GRATUITOUS ALIENATIONS AT COMMON LAW.

Challenge by posterior creditors.

17. The alienation must have been prejudicial to the insolvent's creditors, but it is not necessary that they be prior creditors. Posterior creditors are sufficiently prejudiced, and therefore interested, and entitled to maintain a challenge. (*Edmond*, 1st June 1853; E. 1. 1. 4; *Street*, 12th Feb. 1672; D. 4911.)

By trustee.

18. A trustee on a sequestrated estate challenges for behoof of the whole creditors. (Act 1856, s. 11.)

Action or exception.

19. The challenge is competent by way of action or exception, and either in the Court of Session or in the Sheriff Court. (Act 1856, s. 10; and Act 1857, s. 9.) The form of action in the Court of Session is reduction, in the Sheriff Court it is by a petitory process to set aside the alienation. (Act 1856, s. 10, note c.)

20. As to nature of deeds reducible, *vide* Reductions under Stat. 1621 and 1696, *infra*.

(3.) *Insolvent cannot make Gratuitous Alienations by Act* 1621, *C.* 18, *Part I.*

GRATUITOUS ALIENATIONS UNDER ACT 1621.

Fraud not necessary.

21. The design of the first branch of this Statute is to dispense with a proof of fraud in the reductions by creditors of gratuitous alienations by their debtors to third parties, and hence no proof of fraud either on the part of the granter or of the receiver of the deed is necessary. (2 B. C. 183.)

What are alienations.

22. All alienations are reducible under this Statute that confer upon the grantee a right of property or a right of debt or immunity from a demand. As to what are alienations, *vide* Act 1621, note *c*, *postea*.

Grounds of challenge. 1. A creditor.

23. The pursuer of an action under this Statute must make the following averments—viz.: 1. That he is a creditor of the party whose deed is challenged, or a trustee for creditors of that party. As to nature of debt, *vide* Act 1621, note *a*, *postea*.

2. Prior to deed.

2. That his debt, or if a trustee, the debts of any of the creditors whom he represents, originated prior to the alienation under challenge. As to prior debts, *vide* Act 1621, note *a*, *postea*.

3. Receiver conjunct or confident.

3. That the receiver of the deed is conjunct or confident with the debtor. As to conjunct and confident persons, *vide* Act 1621, note *e*, *postea*.

4. Debtor now insolvent.

4. That the debtor is insolvent (Act 1621, note *d*, *postea*).

5. Also at date of deed.

5. That the debtor was insolvent at the date of the alienation. As to what should be averred

or as to what insolvency is, *vide* Act 1621, note *g*, *postea*. GRATUITOUS ALIENATIONS UNDER ACT 1621.

6. That the alienation was granted without true, just, or necessary causes. As to what are onerous or necessary causes, *vide* Act 1621, note *f*, *postea*.

6. Alienation gratuitous.

24. The challenging creditor must establish all these averments by proof, with the exception of the last two—viz., that of insolvency at the date of the deed, and that of non-onerosity. These points are presumed, and it falls on the receiver to disprove them, by showing that the debtor was solvent at the time the alienation was granted; or that it was granted for an onerous or a necessary cause (Act 1621, note *g*, *postea*). After a delay of forty years, however, the *onus* of proving these points is not thrown on the receiver (ibid., note *m*). And even where the delay in raising the challenge is considerable, the creditor or trustee cannot insist on going narrowly into the inquiry, but it must be conducted on a broad and fair and rather favourable view for the debtor (Act 1621, note *m*).

Proof by creditor.

Presumptions.

Mora.

25. There are two defences to the action—1. That the defender was solvent at the date of the alienation; and, 2. That it was granted for true, just, or necessary causes. Any one of these defences is an answer to the action. (Ibid., notes *g*, *f*, *postea*.)

Defences.

26. The form of action is that of challenge simply when raised by a single creditor; but where it is at the instance of a trustee, there may be combined with it an action of restitution, or count and reckoning and payment, or the like. (Ibid., note *h*, *postea*.)

Form of action.

27. The challenge may be made by way of action or exception. (Ibid., note *i*; Act 1856, s. 10, note *c*.)

Challenge by exception.

28. It may be made in the Court of Session or Sheriff Court. (Act 1621, note *b*; Act 1856, s. 10, note *c*.)

In what court.

29. The direct effect of the action, so far as the challenging creditor is concerned, is to open the subject or fund contained in the deed of alienation to his diligence; or where a trustee is pursuer, then he demands it, or insists on payment; and where it is heritable, he makes up a title. (Ibid., note *j*, *postea*.)

Effect of reduction to creditor.

30. The effect of the challenge, so far as the interposed person is concerned, is, that he falls to give up the fund or subject alienated to him either to the diligence of the chal-

To interposed person.

GRATUITOUS ALIENATIONS UNDER ACT 1621.

lenging creditor or to the trustee, if a trustee is pursuer (ibid., note *j*, *postea*); or he gives it up so far as it is found to be gratuitous (ibid., note *f*, *postea*); and where he has sold it for money, or in satisfaction of a debt, he falls to restore the price to the creditors as above (ibid., *postea*).

To third party acquiring.

31. The effect of the challenge, so far as a third party acquiring the subject or fund is concerned, is, that if he is a partaker in the fraud, or receives the subject of alienation gratuitously from the interposed person, he must restore it; but where he is not partaker in the fraud, and did not purchase the subject, nor receive it in satisfaction of a debt, then he is free from challenge. If, however, he has not paid the price, he gives it up to the creditors. (2 B. C. 195; Act 1621, *postea*.) As to what is participation in the fraud, *vide* Act 1621, note *k*.

(4.) *Insolvent cannot grant Preferences by Common Law.*

PREFERENCES AT COMMON LAW.

32. The question is one of fraud (2 B. C. 197)—the issue sent to the jury in such cases being, whether the alienation under challenge was granted by the debtor and taken by the defender fraudulently, to disappoint the legal rights of the other creditors (*M'Cowan*, 6th July 1852; *Wilson*, 20th Dec. 1853; *Dobie*, 22d Nov. 1854. *Vide Forsyth* and *Thomas*, *infra*). The basis of the fraud is, that after insolvency a debtor's property belongs to his creditors according to their several rights and preferences (1 B. C. 9; Act 1856, s. 121).

Fraud.

Basis of fraud.

Evidence of the fraud.

33. It will be sufficient evidence of the fraud that the debtor knew that his circumstances were, or believed that they might be, in a state of insolvency, and that, in consequence of this knowledge or belief, he granted the alienation under challenge. (*M'Cowan*, 10th March 1853; *M'Ewan*, 30th May 1828.)

Fraud on part of receiver necessary.

34. Fraud on the part of the creditor preferred, or collusion between him and the debtor, is necessary. (*M'Cowan*, 6th July 1852, 10th March 1853; *Forsyth*, 8th July 1863; *Thomas*, 19th Dec. 1866.)

Insolvency.

35. Insolvency of the debtor at the date of the challenge, as well as at the date of the alienation, is necessary to the challenge. (2 B. C. 243.)

Implement

36. The deed is not reducible if executed in implement of

a prior obligation granted at the time of entering into a legal transaction (*Horne*, 12th Feb. 1847); but a mere promise to give security for a debt in answer to demands for payment will not save the deed from reduction (*M'Cowan*, 10th March 1853). PREFERENCES AT COMMON LAW. of prior obligation.

37. The challenge may be made by a prior creditor, but it may be questioned whether a posterior creditor has the right to do so, as it is difficult to see what prejudice posterior creditors sustain by a debtor granting a preference to one prior creditor over another. (*Vide M'Cowan*, 6th July 1852; also E. 4. 1. 44.) Posterior creditors.

38. A trustee on a sequestrated estate challenges for behoof of the whole creditors. (Act 1856, s. 11.) Trustee.

39. The challenge is competent by way of action or exception, and in the Court of Session or Sheriff Court. (Act 1856, s. 10, note *c*.) Challenge by action or exception.

40. As to the nature of deeds reducible, *vide* Reductions under Stat. 1621, *supra*, and 1696, *infra*. Deeds reducible.

(5.) *Insolvent cannot grant Preferences by Act* 1621, *C.* 18, *Part II.*

41. The second branch of the Act 1621, c. 18, is merely an extension of the principle of litigiosity, and the pursuer of a challenge under it has to allege and establish the following grounds of action—viz.: 1. That he is a creditor of the party whose deed is challenged (Act 1621, *postea*). 2. That the defender is the receiver of an alienation from the debtor to the pursuer's prejudice, it being of no consequence whether the defender is a stranger or a creditor, or whether the alienation is gratuitous, or in satisfaction or security of a debt, or whether the alienation is of heritage or moveables, or whether it is an alienation of property, or the execution of a bond or bill (ibid., note *s*, *postea*), but it must not be a cash payment (ibid., note *r*), nor a *novum debitum*, nor a deed granted in virtue of a prior obligation, or under the pressure of personal diligence, as these are not reducible (ibid., note *q*). 3. That the deed or alienation was granted after the commencement of diligence by the pursuer, which would have had the effect of attaching the subject of the deed or alienation, it being essential that the diligence is regular, and that no undue *mora* has taken place in following it out (ibid., note *v*). 4. That the PREFERENCES UNDER ACT 1621. Principle of litigiosity. Grounds of action. Creditor. Defender receiver of deed to pursuer's prejudice. Cash payment. Novum debitum. Implement of prior obligation. Pressure of diligence. Granted after diligence begun.

PREFERENCES UNDER ACT 1621.

deed or alienation was granted by the debtor fraudulently, to defeat the pursuer's diligence (ibid., note *t*). And, 5. That the debtor was notoriously insolvent (ibid., note *p*).

Fraud. Insolvency. Title to sue.

42. The action may be sued by the creditor whose diligence is defeated, or by the trustee in the debtor's sequestration for behoof of all the creditors. (Act 1856, s. 11, *postea.*)

Jurisdiction.

43. It may be raised, like other actions of this class, in the Court of Session or Sheriff Court. (*Vide* par. 19, *antea.*)

By action or exception.

44. The challenge may be by way of action or exception. (Act 1856, s. 10, *postea.*)

Effect of challenge.

45. The effect of the challenge, so far as concerns, 1. The debtor, 2. Any interposed person, partaker of the fraud, and, 3. The receiver of the alienation, is, that they must make the subject alienated forthcoming. (Act 1621, *postea.*)

Bona fide disponee.

46. Any *bona fide* onerous disponee from the receiver would be safe. (2 B. C. 204.)

(6.) *Insolvent's Heritable Property subject to Judicial Sale.*

JUDICIAL SALE.

47. The main features of the process of judicial sale and ranking are—1. That a creditor must be in possession of the whole or part of the debtor's heritable estate (2 B. C. 258). 2. That the interest of the debts and the other annual burdens exceed the yearly income, or that a sequestration have taken place, but no other proof of bankruptcy or insolvency is required (Judicial Procedure (Scotland) Act 1856, s. 3). 3. That all the debtor's lands are included (2 B. C. 256). 4. That all the creditors are ranked, real and personal, according to their several rights and interests (ibid.) 5. That the process is peculiar to the Court of Session (ibid., 257).

Requisites. A creditor in possession. Insolvency. All lands included. Ranking. Jurisdiction.

CHAPTER II.

NOTOUR BANKRUPTCY.

SECT. 1.—CONSTITUTION OF NOTOUR BANKRUPTCY.

CONSTITUTION.

48. Notour bankruptcy is constituted:

1*st*, By sequestration, or by the issuing of an adjudication of bankruptcy in England or Ireland; or, — Sequestration. Adjudication of bankruptcy in England, &c.

2*d*, By insolvency, concurring either with a duly executed charge for payment, followed, where imprisonment is competent, by imprisonment or formal and regular apprehension of the debtor, or by his flight or absconding from diligence, or retreat to the sanctuary, or forcible defending of his person against diligence, or, where imprisonment is incompetent or impossible, by execution of arrestment of any of the debtor's effects not loosed or discharged for fifteen days, or by execution of poinding of any of his moveables, or by decree of adjudication of any part of his heritable estate for payment or in security; or with sale of any effects belonging to the debtor under a poinding, or under a sequestration for rent, or with his retiring to the sanctuary for twenty-four hours, or with his making application for the benefit of *cessio bonorum*. (Act 1856, s. 7; *vide* Act 1696, c. 5.) — By insolvency with diligence. Absconding. Retreat to sanctuary, &c. Where imprisonment incompetent or impossible.

49. Notour bankruptcy of a company is constituted either in any of the foregoing ways, or by any of the partners being rendered notour bankrupt for a company debt. (Act 1856, s. 8.) — Notour bankruptcy of a company.

50. Notour bankruptcy is held to commence from the time when its several requisites concur. (Ibid., s. 9.) — Commencement.

Sect. 2.—Termination of Notour Bankruptcy.

Termination.

51. When notour bankruptcy has once been constituted, it continues, in case of a sequestration, till the debtor shall obtain his discharge; and in other cases until insolvency cease, without prejudice to notour bankruptcy being anew constituted within such period. (Act 1856, s. 9.)

Sect. 3.—Effects of Notour Bankruptcy.

(1.) *It Invalidates Voluntary Preferences to Creditors within Sixty Days.*

Effects on voluntary preferences.

52. Notour bankruptcy does not in any way incapacitate a debtor from entering into transactions with parties who are not creditors. (Act 1696, note *l, postea.*)

Transactions with strangers.

Transactions with creditors.

53. Nor does it incapacitate him from carrying on business as usual with those who may be his creditors; and although the legal effect of any business transactions with any of them be to place them in a position to plead compensation or retention, and thus to give them a preference over other creditors, yet such transactions are not challengeable unless gone into with a view to that result. (Ibid., note *n.*)

Implement of obligations.

54. Nor does it incapacitate him from fulfilling his obligations to his creditors, whether by the payment of debts, or by the implement of obligations *ad facta præstanda.* (Ibid., note *f.*)

Specific implement.

55. Provided the debts so paid are neither future nor contingent, and that the implement of the *ad facta præstanda* obligations, which has been so given, is specific implement, and not in any way as satisfaction of, or as a substitute for, specific implement. (Ibid.)

Obligations to grant security.

56. Provided also that the obligations of which specific implement has been so given, are not obligations to grant satisfaction or security for a debt. (Ibid.)

If under no prior obligation.

57. But it does incapacitate him from granting deeds which he was under no specific engagement to grant to creditors for their satisfaction or farther security in preference to other creditors. (Ibid.)

Effects on voluntary preferences.

58. It also incapacitates him from granting deeds to creditors which he *was* under a specific obligation to grant, if it is an obligation merely to give satisfaction or security for a debt, especially if the obligation is in any way contingent or indefinite, or if there has been delay in implementing it. (Act 1696, note *f.*)

Prior obligation to grant security.

Fraud not necessary.

59. In a challenge of such deeds under this Act, it is not necessary to establish actual fraud (ibid., note *n*). As to form of issue, *vide Morrison*, 20th July 1854; *vide Miller's Trustee*, 19th March 1862.

Pursuer may be a creditor or trustee.

60. The pursuer must be—1. A creditor of the notour bankrupt whose deed is under challenge, and his debt must be prior in origin to the date of said deed; or, 2. A trustee representing creditors whose debts are prior to the deed. (Act 1696, note *d.*) As to creditor's title, *vide* ibid.

Interest in challenge.

61. The challenging creditors must have an interest in the result of the challenge. (Ibid.)

Defender a creditor.

62. The defender must also be a creditor of the notour bankrupt. (Ibid., note *l.*)

Must be receiver of deed qua creditor.

63. The defender must be directly or indirectly the receiver of the deed *qua* creditor, in preference to other creditors, and to the prejudice of the pursuers. (Ibid., notes *h* and *n.*) As to indirect preferences, *vide* note *h.* As to reducible deeds, *vide* note *g.*

Date of deed.

64. It is necessary to the challenge that the deed be dated at or after the notour bankruptcy, or within sixty days before. (Act 1696.) As to computation of the sixty days, *vide* ibid., note *j.*

Is date of its completion.

65. The date of the deed is the date of its completion. (Ibid., note *k.*)

Challenge by action or exception.

66. The challenge may be by way of action or exception. (Ibid., note *e.*)

Form of action.

67. It falls to be raised in the form of a declarator of notour bankruptcy, and of a challenge of the deed when raised by a single creditor, and also of repetition where a trustee is pursuer. (Ibid.)

Jurisdiction.

68. It may be raised in the Court of Session or Sheriff Court. (Act 1856, s. 10, note *c.*)

Effect of reduction to pursuer.

69. The effects of the challenge to the pursuer are—1. To annul the deed *quoad* him; 2. Where he is trustee for the creditors, to entitle him to restitution (ibid., note *p*); and, 3.

EFFECTS ON VOLUNTARY PREFERENCES.

Where the trustee is one under a sequestration, to open the fund to all the creditors (ibid., note *d.*)

Effect of reduction to defender.

70. The effects of the challenge *quoad* the defender are as follows: 1. He must restore the subject alienated; 2. If it consist of an endorsed bill, upon which he has meantime *bona fide* accepted an extrajudicial composition from the debtor, he only gives up the composition; 3. He has no recourse against any third party, who had been liable for his own debt, and to whom he may have granted a discharge at the time of accepting the alienation which has been reduced; 4. But if he has given up any subject to the debtor at the time of receiving the deed which has been taken possession of by the creditors, he may *personali exceptione* demand restitution of it where the challenge is at the instance of the creditors or a trustee for them. (Act 1696, note *p.*)

(2.) *It Invalidates certain Preferences by Legal Diligence within Sixty Days.*

EFFECTS ON LEGAL PREFERENCES.

Arrestments and poindings within sixty days.

71. Arrestments and poindings within sixty days prior to or four months after notour bankruptcy, fall to be ranked *pari passu*, and any creditor judicially producing liquid grounds of debt within such period, is entitled to rank; and in case,—1. The first arresters shall in the meantime recover payment; or, 2. A poinding creditor shall carry through a sale,—they are accountable for the sum recovered. (Act 1856, s. 12 and notes, *postea.*)

(3.) *It subjects Debtor to Sequestration.*

SUBJECTS DEBTOR TO SEQUESTRATION.

72. If a debtor is notour bankrupt, and have resided or had a dwelling-house or place of business in Scotland, within a year before the date of the petition, he is subject to sequestration without his consent (Act 1856, s. 13 and notes, *postea.*) So also is a company in similar circumstances. (Ibid.)

Competent within four months.

73. But the petition for sequestration is competent only within four months of the notour bankruptcy. (Ibid., s. 15 and notes.)

CHAPTER III.

EXTRAJUDICIAL COMPOSITION CONTRACTS.

Sect. 1.—Constitution of Contract.

Constitution. — Consent.

74. The contract is constituted by consent, and the consent may be given by the creditor himself, or by a party legally authorised to do so. (*Hollingworth*, 21st Jan. 1813; 2 B. C. 504.)

Special or general contract.

75. The contract may be one between the debtor and all his creditors, or between the debtor and any one of them. (Ibid.)

Essentials of contract.

76. The essence of the contract is that, on the one hand, a composition is to be paid by the debtor; and, on the other hand, a discharge of the debt is to be granted by the creditor. (Ibid.)

Terms.

77. The terms of the contract are in many cases specific, both as to the time and mode of implement,—*e.g.*, it is sometimes stipulated that bills be granted on a particular day by the debtor, or that a discharge be granted forthwith, or at the time of payment by the creditor.

Express conditions.

78. The contract is sometimes dependent upon express conditions; such as, conditions that all the creditors concur, that the concurrence be got within a certain period, that bills be granted on a particular day, or that implement be regularly made by the debtor. (Ibid.)

Implied conditions.

79. There is likewise an implied condition, that no undue preferences be granted by the debtor to any of the creditors. (Ibid.)

Offer and acceptance.

80. Where the contract originates by way of offer from the debtor, or any other person, it requires acceptance to complete it. (*Montgomerie*, 20th Dec. 1841.)

Sect. 2.—Termination of Contract.

Termination.

Failure of express conditions.

81. The contract becomes null and void upon failure on the part of the debtor to implement the express conditions on which it took place. 1. Creditors are not bound where there is a condition that all the creditors should accede, while all of them do not (*Johnston*, 20th Feb. 1823; *Brown*, 1st June 1830). 2. Neither is a creditor bound, who stipulates that the debtor obtain the consent of a cautioner to the settlement, and which has not been got (*Neil*, 5th Dec. 1833). 3. Neither is a creditor bound who agrees to the composition on the condition of its being paid within a specified time, and which has not been done (*Callon*, 15th Nov. 1851). In all these cases the contract fell to the ground, and the original debt revived.

Failure of implied conditions.

82. The contract also becomes void, or is voidable, upon failure of certain implied conditions. 1. Where there is simply an agreement that the creditor shall accept a composition in settlement of his debt, and the composition is not paid, the original debt revives, as it is an implied condition of the debt being discharged that the composition is paid, and it does not seem of any consequence whether it was a special settlement with one creditor (*Duke of Argyll*, 4th May 1825), or a general settlement with all the creditors (*Paul*, 19th Dec. 1820; *Horsfall*, 24th Nov. 1826). But this implied condition gives way in the face of an absolute discharge granted by the creditors of their debts upon receiving bills for the composition (*Graham*, 9th Dec. 1828). 2. The settlement is also reducible if any preferences have been granted to any creditor over other creditors (2 B. C. 505).

Fraud.

83. The contract is also voidable upon the ground of fraudulent misrepresentation by the debtor as to the state of his affairs. (*Vide Baillie*, 23d March 1837.)

Implement.

84. The contract is also terminated by implement. (*Callon*, 15th Nov. 1851.)

Sect. 3.—Evidence of Contract.

Evidence.

Parole.

85. It does not appear that a composition contract may be proved by parole evidence. (2 B. C. 504.)

86. It may be proved by writing: 1. By a formal deed; 2. By a holograph letter; 3. By a writing bearing merely the signature of the creditor (2 B. C. 504; *Glass*, 12th May 1825; *vide Kilpatrick*, 9th June 1825); 4. By a minute of a meeting of the creditors, signed by the preses; provided that those against whom it is used as evidence are proved to have been present and heard it read without objection, and assented to the nomination of the chairman to preside and sign the minute (B. P. 2222; B. C. 504); 5. But where a cautionary obligation is attached to the contract, it must be in writing (19 & 20 Vict. c. 60, s. 6). Evidence. Writing.

87. Proof by reference to oath is of course competent either to establish or cut down a settlement (*vide Glass*, 12th May 1825). As to onus of proof, *vide Robertson*, 4th May 1820; *Mur.* Oath.

Sect. 4.—Rights and Powers of Parties.

88. The debtor is entitled—1. On implementing his part of the contract, to get a discharge from the creditors and their vouchers of debt (2 B. C. 506); 2. To repetition of any preferences which he may have given to any of his creditors (*Mack*, 25th Nov. 1814; *Arrol*, 24th Feb. 1826; *Robertson*, 13th July 1837); 3. To complete control over his estate where he has not agreed to part with it to any extent to the creditors (*vide Scott*, 14th Feb. 1834). Rights and powers of parties. Debtor's right to discharge.

89. The creditors have a right—1. To implement of such stipulations as to granting bills or giving security or exercising control over the estate, as the settlement contains, and finally to payment of the composition (*Neil*, 5th Dec. 1833; *Dick*, 12th Nov. 1845); 2. Also, to challenge preferences and thereby reduce the contract (2 B. C. 505); 3. To payment of the original debt, if any conditions, express or implied, have not been implemented (*vide Johnston* and other cases, *supra*); and, 4. To retain all securities they may hold over the estate of the bankrupt (*Black*, 29th Feb. 1840); 5. But the right of the creditors to composition against the cautioner is lost, if they either arrange with the debtor to give him time (B. P. 262), or deviate from a course of management of the debtor's estate which was settled by the parties to be taken when the contract was entered into (*Scott*, 14th Feb. 1834). Creditors' right to implement. To challenge preferences. Also to payment of original debt. To retain securities. Loss of claim against cautioner.

RIGHTS AND POWERS OF PARTIES.

Cautioners may accept assignation of estate.
Right of relief.
Right to assignation from creditor.
Challenge of preference.
No right of discussion.
Revival of his own debt.
His claim against debtor.

90. The cautioner has a right—1. To accept from the debtor an assignation of his estate in order to pay the composition (*Robertson*, 13th July 1837); 2. Of relief against the debtor (B. P. 255); 3. To an assignation from the creditor of his diligence to enable him to operate relief (ibid.; Act 1856, s. 56, *postea*); 4. To challenge preferences and sue for repetition (*Arrol*, 24th Feb. 1826); 5. But he has no right of discussion, unless specially stipulated for (19 & 20 Vict. c. 60, s. 8); 6. And although he has become cautioner, yet if he be a creditor himself and his own composition has not been paid, his debt may still revive, so as to entitle him to rank for the full amount in a subsequent sequestration of the debtor's estates (*Paul*, 19th Dec. 1820); but, 7. He cannot claim from the debtor or rank on his estates for more than he actually pays to the creditors under his cautionary obligation (2 B. C. 506).

SECT. 5.—DUTIES AND LIABILITIES OF PARTIES.

DUTIES AND LIABILITIES OF PARTIES.

Debtor to give no preferences.
To fulfil contract.

91. The debtor's duty is—1. To refrain from giving preferences, and to preserve perfect equality among his creditors. Should he transgress this rule, he lays the contract open to reduction at the instance of any of the creditors who may discover the fraud, and the contract being thus set aside, he renders himself liable for the original debts (2 B. C. 504). 2. To fulfil all the obligations and stipulations of the contract, such as getting the accession of all the creditors (*Johnston, supra; Brown, supra*), or getting the consent of a cautioner (*Neil, supra*), or paying composition when due (*vide Paul, Cullon*, and *Horsfall, supra*). 3. To relieve the cautioner of any responsibility he may have incurred, or any payment he may have made (B. P. 255).

To relieve cautioner.

Creditor to take no preferences.

92. The creditor's duty is—1. To refrain from taking preferences; and they are liable, should they take such, in repetition to the debtor and his cautioner (*Arrol*, 24th Feb. 1826; *Mack*, 25th Nov. 1814; *Macfarlane*, 14th Dec. 1864). 2. To adhere to the terms of the contract, and in particular to any prescribed course of management of the debtor's estate, under the risk of losing their claim against the cautioner, unless he has been consulted (*vide Scott, supra*). 3. To deliver up discharges and vouchers on implement by the debtor, and

To adhere to contract.

To grant discharge.

to grant receipts for any payments they may receive. As also, 4. To assign their debts and vouchers to the cautioner if he is the party who pays the composition (B. P. 255).

Duties and liabilities of parties. — To assign debt to cautioner.

93. The duty of the cautioner is to perform the obligations undertaken by him in the contract, unless the creditors have deviated from a prescribed course of management without his consent (*Scott, supra*), or granted time by an express arrangement with the debtor (B. P. 262), or discharged the debtor extrajudicially, except where the discharge is so qualified as not to injure his right of relief (B. P. 260). But the cautioner is not relieved by the creditors bringing about a sequestration upon the composition bills (*Freeland*, 11th June 1823; *Muir*, 2d Dec. 1825), nor by consenting to the debtor's discharge under the sequestration (Act 1856, s. 56, *postea*).

Cautioner's duties.

Sect. 6.—Law Procedure against Parties.

Procedure. — Debtor subject to original diligence. To action for composition, &c.

94. The debtor is subject to the following procedure: 1. To the operation of the original diligence, or to an action for the original debt, at the instance of the creditor, where the contract is void through failure of any of the conditions (*Callon*, 15th Nov. 1851); 2. Or to action and diligence for payment of the composition where the contract is valid; and in the case of no discharge having been given of the original debt, it would appear that the diligence for the debt may still be enforced to the extent of the composition (*Dick*, 12th Nov. 1845); and, 3. To action of relief at the instance of the cautioner (B. P. 255).

To action of relief.

Creditor subject to reduction of preferences.

95. Any creditor who has received an undue preference is subject to an action of reduction and repetition at the instance of the debtor, or the cautioner, or their representatives. (*Arrol*, 24th Feb. 1826; *Mack*, 25th Nov. 1814; *Robertson*, 13th July 1837.)

Cautioner subject to diligence.

96. The cautioner is subject to diligence upon any bond or bill which he may have granted for the composition, and that without the benefit of discussion, where not expressly stipulated for. (19 & 20 Vict. c. 60, s. 8.)

CHAPTER IV.

TRUST-DEEDS.

SECT. 1.—CONSTITUTION OF TRUST.

CONSTITUTION OF TRUST.

Form of deed.

97. The trust may be constituted by a simple conveyance in trust, or by an absolute disposition and back-bond of trust, or by either of these forms combined with a deed of accession on the part of the creditors: but whichever mode is adopted, the necessary deed or deeds must be in proper form, duly tested and stamped, and also delivered, in order to be effectual. (2 B. C. 489.)

Essential clauses.

98. The deed or deeds of trust ought to contain the following clauses: 1. A clause of conveyance of property from the debtor; 2. A clause nominating a disponee; 3. A clause specifying that the object of the deed or deeds is the realisation and distribution of the property conveyed among the creditors of the granter. (2 B. C. 489.)

Conditional clauses.

99. The deed may also contain conditional clauses—*i. e.*, clauses making the validity of the deed contingent upon acceptance by the trustee named, or upon accession to the terms of the deed, of all the creditors. (2 B. C. 488.)

Completion of trustee's right.

100. The trustee's right must be completed by sasine, or registration, or delivery, or intimation, as the case may be, in order to be effectual against non-acceding creditors. (2 B. C. 491.)

Accession not essential.

101. The deed, in order to be valid, does not require the accession of the creditors; but in that case the trustee must complete his title prior to the diligence of any of the creditors, otherwise his right may be lost. (2 B. C. 486; *vide* par. 104. *infra.*)

Sect. 2.—Termination of Trust.

Termination of trust.

Failure of conditions.

102. The trust may come to a close upon the failure of any condition which is made essential to its validity—such as the acceptance by the trustee named, or the accession of all the creditors. (*Lyell*, 11th March 1823.)

Does not fall on non-acceptance, &c., of trustee.

103. The trust does not necessarily terminate by the non-acceptance, resignation, declinature to act, or death of the trustee; but in such cases the Court of Session will appoint a successor to carry out the trust (2 B. C. 491); and in the case of resignation of a gratuitous trust, the trustee may himself, unless expressly prohibited, name a successor. (24 & 25 Vict. c. 84, s. 1.)

Does not terminate by non-accession.

104. The trust does not necessarily terminate by the want of accession on the part of the creditors. (*Martin*, 8th Dec. 1836; *vide* par. 101, *supra*.)

Deed reducible.

By Act 1621.

By Act 1696.

At common law on account of preferences.

105. The deed is reducible—1. Under the Act 1621 (Part II.), where granted in prejudice of the diligence of creditors (*Grant*, 6th Feb. 1835); 2. Also under the Act 1696, where granted within sixty days of notour bankruptcy (*Douglas*, 15th June 1832; *Wright*, 7th March 1839); 3. At common law, where it is granted for the benefit of particular creditors to the exclusion of others (2 B. C. 246), or where a preference has been granted to any creditor to induce him to accede (2 B. C. 500); also, 4. At common law, where the debtor has inserted incompetent conditions into the deed—such as exacting a discharge from the creditors (*Snodgrass*, 13th Nov. 1744, D. 1209; *Grant*, 5th June 1747, D. 1210), or conferring upon the trustee the power of judging claims (2 B. C. 488), or prescribing any particular form of management (*M'Kell*, 30th July 1766, D. 894); but, 5. Insolvency *per se* is no ground of challenge (2 B. C. 492).

At common law on account of incompetent conditions.

Insolvency per se no ground of challenge.

Superseded by sequestration.

106. The trust may at any time be superseded by sequestration (*Lockie*, 14th Feb. 1837); but not where the trust-fund has been contributed by others than the bankrupt, and never formed part of his estate (*Murray*, 15th Dec. 1864).

Terminated by implement.

107. It may also be terminated by implement — *i.e.*, by distribution of the estate among the creditors, so far as the funds admit, in the case of there being a deficiency; and where there is not, then to the extent of the legal claims of

Termination of trust.

the creditors, and by payment of any reversion to the debtor. (2 B. C. 504.)

Sect. 3.—Evidence of Trust and Accession.

Evidence of trust and accession.

108. The trust must be proved by a regularly executed deed. (2 B. C. 489.)

109. Accession may be proved by writing, or by oath; and in certain cases, and to certain effects, by parole evidence.

By deed.

Accession by writ or oath.

Proof by writing or by oath is sufficient to bind the creditors to the trust-deed, with all stipulations it may contain; but a distinction has been drawn, when accession is attempted to be proved *rebus ipsis et factis*, between proof sufficient to infer accession to the deed itself, and that which only implies accession to common measures on the part of the creditors for their common benefit: thus a creditor who attends a meeting where common measures were resolved upon without dissent, was held to have induced the debtor and creditors to rely on his concurrence, and was thus barred *personali exceptione* from pursuing separate diligence (*Borthwick*, 13th Nov. 1832; *Lea*, 16th Jan. 1828; *M'Vicar*, 18th Feb. 1762, D. 1214; *Globe Insurance Company*, 16th Feb. 1849; *M'Kenzie*, 9th July 1854; *vide Kerr's Trustees*, 15th Dec. 1832); but where accession to the conditions of the deed is to be established, the most explicit proof is required (*Heriot*, 27th June 1766, D. 12,404.) It is not sufficient to infer accession that the creditor has lodged a claim with the trustee (*Hamilton*, 21st June 1834; *Thomson*, 20th Feb. 1855; *Campbell*, 3d July 1829); but instructions to an agent to accede, and the agent attending a meeting of creditors, and concurring in their measures under the trust, were held enough (*Heriot, supra; vide Lurken*, 1st July 1824; *vide Marianski*, 10th March 1871.

By parole.

Accession to clauses of deed.

Creditors pursuing separate measures.

Lodging claim is not accession.

What is accession.

Sect. 4.—Rights and Powers of Parties.

Rights and powers of parties.

110. During the *subsistence* of the trust, the truster has the following rights and powers—viz.: 1. The radical right in the estate, notwithstanding the trust (*M'Millan*, 4th March 1821; *Barbour*, 25th Jan. 1831); 2. A right at all times to see that

Radical right in estate.

the trustee observe the conditions and directions of the trust, and do not waste or misapply the funds to the detriment of his reversionary interest, and this even although his estate show no apparent surplus (*Pender*, 17th Nov. 1831; Lord Justice-Clerk in *Martin*, 8th Dec. 1836); and a power to enforce this right by suspension, as in *Pender, supra*, or such other procedure as may be necessary; 3. A right of redemption and revocation, provided he has become able to satisfy his creditors, and does so; as also a power to compel the trustee to denude (2 B. C. 497); 4. A right to fulfilment of any stipulations he may have made, as for an allowance out of the estate during the existence of the trust (*Earl of Buchan*, 11th July 1835); 5. A right to have the trust superseded, and the estate wound up under a sequestration; together with a power to apply for sequestration with the requisite concurrence of a qualified creditor (*Earl of Kellie*, 28th Feb. 1821; *Thomson*, 24th Feb. 1827); and, 6. A right of objection to the appointment by the Court of any new trustee, if not a fit and proper party (*Earl of Lauderdale*, 9th March 1830).

RIGHTS AND POWERS OF PARTIES.

Right of control over trustee.

Right of redemption.

Right to fulfilment of stipulations.

To apply for sequestration.

May object to new trustee.

111. On the *termination* of the trust, the truster has the following rights and powers—viz.: 1. A right to an accounting with the trustee, and to payment of any reversion which there may be left; and to enforce these he has a power to sue an action of count, reckoning, and payment, and an action to compel the trustee to denude in his favour (2 B. C. 497, *vide Edmond*, 16th Nov. 1860; *Martin*, 8th Dec. 1836); and, 2. A right to a complete discharge if he have stipulated for it in the trust-deed, and it has been agreed to (*Gibson*, 7th Dec. 1824).

To accounting with trustee.

To discharge if stipulated for.

112. The rights and powers of the creditors are as follows: 1. Having once acceded to the trust, or even attended a meeting of the creditors when joint measures are resolved upon, they have no right to pursue separate measures against the estate (2 B. C. 499; *M'Vicar*, 18th Feb. 1762, D. 1214; *Anderson*, 2d March, 1813; *Globe Insurance Company*, 16th Feb. 1849; *M'Kenzie*, 9th July 1854). 2. They have a right, on the misconduct, non-acceptance, resignation, or death of the trustee, to have a successor appointed to carry out the objects of the trust (2 B. C. 491); and where they have themselves a power by the deed to nominate a successor to the trustee, they may do so (*Earl of Lauderdale*, 9th March 1830.) 3. They

Separate measures by creditors.

Appointment of new trustee.

Adminis-

RIGHTS AND POWERS OF PARTIES.

have a right to have the estate duly administered, and the proceeds divided among them, according to their several rights and interests (*Bell*, 17th June 1834; *Mansfield*, 30th Nov. 1843; *Globe Insurance Company*, 16th Feb. 1849). 4. They have a right to rank for the full amount of their several debts whether they hold securities or not, and even although those securities have been realised, provided the trust has emerged prior to the realisation (*Kirkcaldy*, 8th Dec. 1841). 5. They have a right to set aside gratuitous alienations or preferences as well on the Statutes 1621 and 1696 as at common law. 6. They have a right to payment of their debts in full; and if they have not agreed to stay diligence, they may incarcerate the debtor in order to recover payment (*Watson*, 5th Feb. 1724; D. 6397). 7. They have a right to make application, or to concur in an application for sequestration, notwithstanding their accession to the trust (*Campbell and Beck*, 11th June 1862; 2 B. C. 497); or, 8. To raise an action of multiplepoinding, and have the funds divided under either of these processes among the creditors, according to their preferences (2 B. C. 496; *Macfarlane*, 12th Dec. 1823).

Administration of estate.

Ranking.

No deduction of securities.

To reduction of preferences, &c.

Full payment.

Incarceration of debtor.

Sequestration.

Multiplepoinding.

Trustee to recover estate.

To use powers in deed.

113. The trustee has—1. The right to sue for, recover, take possession of, and administer the estate (*Kerr*, 21st Dec. 1827); and, 2. For that purpose to use all the powers given him in the trust-deed, but nothing more (2 B. C. 502). As to power of trustees to supersede factor named in deed, *vide Fulton*, 15th Feb. 1831. 3. To enter into contracts and grant obligations so as to bind the estate in the course of their management (*Earl of Breadalbane*, 16th Jan. 1824); but, 4. He cannot delegate his powers to any one, although he may appoint factors; and unless expressly prohibited by the deed, a single trustee, or if more than one, then a majority (which is a quorum), in the case of a gratuitous trust, may resign office, or may assume new trustees (24 & 25 Vict. c. 84, s. 1; *vide Coulter*, 10th June 1823). 5. When the estate is realised, he has a power to rank the creditors according to their legal rights, and pay dividends (2 B. C. 503). 6. He has a right of lien over the estate for outlay and expenses (2 B. C. 497), but can charge no remuneration as trustee (*Johnston's Trustees*, 4th Jan. 1738; D. 13,407), nor any fees where he acts as law agent to the trust (*Lauder*, 15th July 1859). 7. He has also a right of relief against creditors where he acts under their

To bind estate.

Cannot delegate his powers.

Appointment of factors.

Assumption of new trustees.

To rank creditors.

Right of lien.

Cannot charge fees for acting as law agent.

Right of relief.

express authority in any transaction (*Mercer*, 11th Dec. 1823; *Wilson*, 17th May 1822); 8. A right to a discharge (*Edmond*, 16th Nov. 1860), and a power to obtain it in an action of multiplepoinding and exoneration (2 B. C. 504). 9. But the trustee has no right under the trust-deed to reduce preferences, and to do so he would require to be vested with the right by the creditors themselves. RIGHTS AND POWERS OF PARTIES. Right to exoneration.

SECT. 5.—DUTIES AND LIABILITIES OF PARTIES.

114. 1. The duty of the truster is to implement all the obligations incumbent upon him under the trust-deed (2 B. C. 502). 2. If there be no clause of discharge, the truster remains liable for the original debt, less the dividends paid (2 B. C. 502). 3. It is his duty to refrain from granting preferences, otherwise the trust-deed is liable to be reduced (2 B. C. 500). DUTIES AND LIABILITIES OF PARTIES. Implement of obligations in deed.

115. It is the duty of the creditors—1. To refrain from taking preferences from the debtor; and they are liable to an action of reduction and repetition if they do so at the instance of the other creditors (2 B. C. 500); 2. To grant discharges for their dividends; and, 3. Having acceded to the trust, not to use their diligence against the debtor's estate during the existence of the trust (*vide M'Vicar, Globe Insurance Company*, and *M'Kenzie, supra*). 4. Creditors are liable in relief to the trustee where he acts under their express authority in any transaction (*Mercer*, 11th Dec. 1823). Creditors cannot take preferences. Discharges. Diligence. Relief to trustee.

116. It is the duty of the trustee—1. To secure his title to the estate by intimation, infeftment, registration, or possession, as the case may be (2 B. C. 502); 2. To administer it for the creditors' behoof (*Globe Insurance Company*, 16th Feb. 1849; *Stubbs*, 24th June 1829; *vide Pagan*, 17th Jan. 1823); 3. To realise the estate (*Innes*, 18th Dec. 1828), and lodge the sums recovered in bank, and grant all deeds necessary in its realisation (*Mansfield*, 30th Nov. 1843); 4. To observe any rules of superintendence or system of management stipulated for in the trust-deed (*vide* 2 B. C. 502); 5. To divide the estate among the creditors according to their respective rights and preferences (*Mansfield*, 30th Nov. 1843; *Globe Insurance Company, supra*); 6. To count and reckon with the truster, and Trustee to complete title. Administration of estate. Realisation of estate. System of management. Division of estate. Count and reckoning.

Duties and liabilities of parties.

Litigation.

Adoption of contracts.

Liability for costs.

Neglect of duty.

Extent of liability.

to pay any reversion to him, and also to denude in his favour upon his acts and intromissions being approved of (*vide Edmond*, 16th Nov. 1860); 7. To refrain from useless litigation; and he is liable, if he be unsuccessful, in payment of the expenses (*Buchanan*, 15th June 1827). 8. If he adopt any contract, such as a lease, he is liable in the rents to the landlord; and if he take infeftment in, and consequently adopt a feu, he is liable in the feu-duties to the superior (*Fairley*, 18th Dec. 1821; *Marquis of Abercorn*, 16th Dec. 1835). 9. He is likewise liable personally for any obligations he may incur in the execution of the trust, and any expenses which may be decerned for against him in any lawsuit (*Torbet*, 23d Feb. 1849). 10. He is liable, in case of neglect of duty or breach of trust, to an action of implement, or for damages, and also to interdict and removal. As to liability of co-trustees, *vide M'Clymont*, 14th Feb. 1827. 11. A trustee acting gratuitously is liable only for his own acts and intromissions, and not for those of a co-trustee; and is not liable for omissions unless in each of these cases the contrary is expressed in the deed (24 & 25 Vict. c. 8, s. 1).

Sect. 6.—Law Procedure against Parties.

Law procedure against parties.

For implement of deed.

Sequestration.

Exoneration of trustee.

Creditors subject to interdict of separate diligence.

Reduction of preferences.

Exoneration of trustee.

Trustee to denude, &c.

Interdict, &c.

117. The debtor is subject to the following procedure: 1. To a charge on the trust-deed, or to an action for implement of the stipulations contained in it, as granting supplementary conveyances, &c.; 2. To sequestration of his estates; 3. To an action of exoneration at the instance of the trustee (2 B. C. 504); and, 4. To diligence at the instance of creditors unless they agree to a *supersedere* of diligence (2 B. C. 503).

118. The creditors are subject—1. To an interdict against separate diligence where they have acceded; 2. To an action of reduction and repetition of any preferences they may have taken; and, 3. To an action of multiplepoinding and exoneration at the instance of the trustee (*M'Farlane*, 12th Dec. 1823).

119. The trustee is liable to the following procedure: 1. A petition for removal and to denude (2 B. C. 497); 2. To an interdict by the debtor from doing anything incompetent, or to compel him to do what he is bound to do (*Pender*, 17th

Nov. 1831); 3. To an action of multiplepoinding (*M'Farlane*, 12th Dec. 1823), or an action to rank a creditor or pay him a dividend (*Bell*, 17th June 1834); and where the trustee is unsuccessful in an action regarding a creditor's claim, and is found liable in expenses, he is not entitled to charge the estate with these expenses, so as to diminish the creditor's share of the trust-funds (*Carswell*, 21st June 1832; *Cleghorn*, 16th June 1827; *Paterson*, 4th June 1824; *Robertson*, 4th Dec. 1823; *Welsh*, 15th June 1826); 4. To an action of count and reckoning by the creditors (*Bell, supra*); and, 5. To an action of count and reckoning and payment of the reversion by the debtor or his representatives (2 B. C. 496).

LAW PROCEDURE AGAINST PARTIES.

Multiplepoinding, &c.

Count and reckoning.

CHAPTER V.

TREATISE ON CESSIOS.

SECT. 1.—OBJECT OF THE PROCESS.

OBJECT OF PROCESS.

120. The object of a debtor in raising this process is the obtaining of protection from imprisonment. (E. 4. 3. 26.)

Personal protection. Surrender.

121. The condition of attaining this object is *cessio bonorum*, or the surrender of his estates to his creditors. (Cessio Act, s. 16.)

SECT. 2.—EFFECTS OF DECREE.

EFFECT OF DECREE.

122. The decree of cessio does not protect the debtor from—1. The consequences of crime; 2. Nor from subsequent debts (2 B. C. 596; *Tulloch*, 3d Feb. 1847; *vide M'Master*, 16th Dec. 1830); 3. Nor from diligence *ad factum præstandum* (*Chisholm*, 8th March 1825); 4. Nor from debts omitted in the list contained in his application (*Veitch*, 28th Nov. 1821).

As a protection.

As an assignation.

123. The decree pronounced, granting the benefit of *cessio bonorum*, operates as an assignation of the debtor's moveables in favour of any trustee mentioned in the decree for behoof of the creditors: but it is optional to the creditors to require the debtor to execute a disposition *omnium bonorum* in favour of the trustee, the expense of which deed is paid out of the readiest of the funds thereby conveyed (Cessio Act, s. 16, and notes, *postea*). No stamp is required for the disposition (ibid., s. 20).

SECT. 3.—TITLE TO SUE.

TITLE TO SUE.

124. The debtor must be insolvent, and must prove his in-

Insolvency.

solvency if necessary. (Ibid., s. 18.)

125. The debtor, 1. Must have been charged to pay a civil debt, and a warrant of imprisonment must have been issued against him; or, 2. He must be liable to imprisonment under a decree of a Small Debt Court; or, 3. Be in prison; or, 4. Have been imprisoned and afterwards liberated, in respect of these several cases of a civil debt, before he can apply for decree of cessio or interim protection. (Cessio Act. s. 2.)

Title to sue.
Charge and warrant of imprisonment.
Liability to imprisonment under small-debt decree.
In prison.
Imprisoned and liberated.

Sect. 4.—Procedure.

Procedure.

126. The process cannot now be instituted in the Court of Session. (39 and 40 Vict. c. 70, s. 26.)

Court of Session.

127. The process is competent in the Sheriff Court of the county in which the debtor has his ordinary domicile (Cessio Act, s. 3). And the Sheriff has jurisdiction in such a process as fully as in any other action by law competent before him. (ibid., s. 1).

Sheriff Court.

Petition.

128. The process is raised by the debtor in the form of a petition, setting forth that he is insolvent under a charge to pay a civil debt on which imprisonment may follow, or against whom there has been granted a decree for payment of a civil debt not requiring a charge, and on which imprisonment may follow, or that he is in prison, or has been imprisoned and afterwards liberated, in respect of a civil debt; that he is unable to pay his debts, and is ready to surrender his estates for behoof of his creditors; and praying for interim protection against the execution of diligence, and for decree of *cessio bonorum:* in which petition he inserts a list of all his creditors, specifying their names and designations, and places of residence, so far as known to him. (Cessio Act, s. 3; Act of Sederunt and Sheriff Court (Scotland) Act 1875, s. 26).

Productions.

129. The debtor with such petition produces (as the case may be) the schedule of an expired charge, or a certificate of the granting of the decree by the Clerk of the Court which granted the same; or if he be in prison, or imprisoned and thereafter liberated, a certificate from the keeper of the prison of such imprisonment, and the date thereof, and of the liberation (*ut supra*).

Warrant.

130. On such petition being presented, the Sheriff orders a notice in the 'Edinburgh Gazette,' and intimation to the creditors, and appoints a diet of examination (*ut supra*).

PROCEDURE.

Mode of intimation.

131. When intimation is by letter, the transmission of a copy of the notice in the Gazette addressed to each creditor is sufficient, but the name of the petitioner's agent must always appear in or be annexed to the said notice. (Act of Sederunt 1839, s. 2, *postea.*)

Mode of citation.

132. If by citation, it must be given not later than ten days next after the Gazette notice; and the creditors must be cited to a diet at least thirty days subsequent to the date of publication. (Ibid., s. 3.)

Intimation of prayer for liberation, &c.

133. When the petition prays for interim protection or liberation, that must be specially intimated to the creditors. (Ibid., s. 4.)

Lodging of documents.

134. The debtor must, on or before the sixth lawful day prior to the day so appointed, lodge a state of his affairs subscribed by himself, and all his books, papers, and documents relating to his affairs, in the hands of the Sheriff Clerk, together with a copy of the said Gazette, and with evidence of intimation. (Cessio Act, s. 4.)

Failure to lodge documents.

135. Otherwise the process falls to be dismissed by the Sheriff, unless he shall be satisfied that the debtor had sufficient excuse; in which case, the Sheriff may order new intimation. (Act of Sederunt 1839, s. 7, *postea.*)

No procedure till diet.

136. No procedure takes place until the diet of compearance. (Ibid., s. 6.)

Appearance of creditors.

137. No appearance for a creditor shall be allowed without production of the letter sent to him, the citation served, or a mandate subscribed by him. (Ibid., s. 18, *postea.*)

Attendance of debtor.

138. It is competent for the Sheriff to ordain the debtor to attend diets of Court. (Ibid., s. 20.)

Objection that all parties not called.

139. When it is objected that all the creditors have not been called, the Sheriff may either dismiss the process, or give authority to call the persons omitted. (Ibid., s. 8.)

New diet of examination.

140. When such creditors appear, it is competent for the Sheriff to fix another diet for his re-examination of the debtor. (Act of Sederunt 1839, s 9.)

A sequestrated bankrupt produces certificate by trustee.

141. When the process has been raised by a bankrupt under sequestration, and not discharged, it is necessary to produce a certificate under the hands of the trustee or of a majority of the commissioners, stating whether the bankrupt has complied with the Bankrupt Act. (Ibid., s. 10.)

Liberation

142. It is competent to the Sheriff at once to grant interim

protection on caution to appear at all diets in the process; as also to grant liberation from prison on notice given to the incarcerating creditors, and on caution; and such warrants remain effectual till recalled. (Cessio Act, s. 2 and 15; Act of Sederunt 1839, s. 11 and 21; and 39 and 40 Vict. c. 70, s. 26.) PROCEDURE. or interim protection.

143. On the day appointed for the compearance of the creditors, the debtor must appear in public court, in presence of the Sheriff, for examination as to his affairs. (Cessio Act, s. 5.) Examination of debtor.

144. The Sheriff, on such examination being taken, allows a proof to the parties if it shall appear necessary. (Cessio Act, s. 6; Act of Sederunt 1839, s. 12, *postea*.) Proof.

145. It lies upon the debtor to establish his insolvency if the same shall be denied. (Cessio Act, s. 18.) Proof of insolvency.

146. The applicant must make out a case for cessio; and it will not be granted, as a matter of course, because the creditors do not prove fraud, concealment, or falsehood; and it is the duty of the Sheriff to inquire into the case, and to encourage creditors to come forward and state objections. (Cessio Act, s. 6, note *a*, *postea*.) Onus of proof on debtor.

147. When a proof is allowed, it is recommended that the Sheriff shall, by the interlocutor allowing it, specify, if possible, under articulate heads, the several facts to be proved by either party. (Act of Sederunt 1839, s. 13, *postea*.) Specification of facts to be proved.

148. The Sheriff either makes notes of the evidence, or he may appoint the proof, or any part thereof, to be taken down *verbatim* by the Clerk, which must be subscribed by the witness or witnesses, and by the Sheriff or Commissioner when a commission is necessary. (Ibid., s. 14.) Mode of taking proof.

149. The Sheriff hears parties *viva voce*, and makes a note of any objections and answers that may be stated, and either grants decree or refuses the same *in hoc statu*, or grants it, subject to a declaration that it shall not be for such time as shall appear proper, or makes such other orders as may be necessary. (Cessio Act, s. 6; Act of Sederunt 1839, s. 15 and 16, *postea*.) Hearing and decision.

150. Appeals in cessio processes are now taken in the same way as in other actions in the Sheriff Court. (39 and 40 Vict. c. 70, s. 26.) Appeals.

151. If the decree of cessio be refused *in hoc statu* by the Renewed

PROCEDURE. application.

Sheriff, the debtor may, at any time thereafter, without the necessity of presenting any new petition, apply to have decree of cessio pronounced in his favour. (Act of Sederunt 1839, s. 22).

Oath.

152. The debtor, in the event of cessio being awarded, makes an oath or affirmation to the effect that he has given a true and correct state of his affairs; that he has no estates other than those specified in the said state; that he has not granted any conveyances thereof, except the one to the creditors, where one is granted; and that he has not parted with any of his goods nor cancelled any documents. (Cessio Act, s. 18.) *Vide* Act of Sederunt 1839, s. 19, for form of oath or affirmation.

Dyvour's habit.

153. It is not lawful to ordain the debtor to wear the dyvour's habit. (Cessio Act, s. 18.)

Court of Session agents.

154. Agents of the Court of Session may practise in the Sheriff Courts in cessio, but are not entitled to any other fees than are exigible by other agents before such Courts. (Ibid., s. 21.)

Sisting process till Statute complied with.

155. The process may be sisted till regulations have been duly complied with, if it appear to the Sheriff that this can be still done consistently with justice, and with the due execution of the Statute. (Act of Sederunt 1839, s. 23.)

SECT. 5.—GROUNDS OF OBJECTION TO THE CESSIO.

OBJECTIONS TO CESSIO.

156. Cessio is invariably refused *hoc statu* where the debtor is guilty of concealment of funds, or fails to disclose the state of his affairs. (*Vide* Shaw's 'Digest,' *voce* Cessio.)

157. It will also be refused or granted superseding extract for a given time where the debtor is guilty of falsehood, fraud, extravagance, recklessness, or general misconduct. (Ibid.)

158. In the case of a debtor in the aliment of an illegitimate child, he finds caution for future aliment before cessio is granted. (*Chisholm*, 2d Dec. 1856.)

159. The trustee on the estate of a sequestrated bankrupt, in the case of the latter applying for cessio, grants a certificate as to the bankrupt's conduct under his sequestration; but this certificate is not final and decisive. (Act of Sederunt 1838, s. 9; Act of Sederunt 1839, s. 10, *postea*.)

CHAPTER VI.

SEQUESTRATIONS.

Sect. 1.—Of the Bankrupt.

(1.) *Requisites of Sequestration.*

Requisites of sequestration.

160. The party, whether an individual, a company, or an alien, must be a debtor, and it is no matter that he is under any legal incapacity or unconnected with trade. (Act 1856, s. 13, note *a*, *postea*.)

Must be a debtor.

161. In the case of a living debtor, where he is petitioner, he requires the concurrence of a creditor whose debt is not less than £50, or of two creditors whose debts together are not less than £70, or three or more creditors whose debts together are not less than £100, provided such debts are not contingent. (Act 1856, s. 14, and notes, *postea*.) As to character in which creditor acts, *vide* s. 13, note *c*.

Concurrence of creditors.

162. In the case of a living debtor, where a creditor is petitioner, then—1. The debt must be of the amount and nature above specified (Act 1856, s. 14.) 2. The debtor must be notour bankrupt, and have within a year resided or had a dwelling-house or place of business in Scotland; or if a company, it must have within such time carried on business in Scotland, and any partner have so resided or had a dwelling-house, or the company must have had a place of business in Scotland (ibid., s. 13, and notes, *postea*). 3. The notour bankruptcy must have taken place within four months prior to the petition (ibid., s. 15, and notes).

Notour bankruptcy.

Period of notour bankruptcy.

163. In the case of a deceased debtor, the petitioner may be a mandatory to whom the debtor had granted a mandate to apply for sequestration. (Act 1856, s. 13.)

Petition by mandatory.

Requisites of sequestration. Deceased debtor.

164. In the case of a deceased debtor, where a creditor or creditors are the petitioners, their debt must be of the amount and nature above specified (Act 1856, s. 14, and notes); but the sequestration cannot be awarded until the expiration of six months from the debtor's death, unless he was at the time of his death notour bankrupt, or unless his successors concur in the petition, or renounce the succession. (Ibid, s. 15, and notes.)

Jurisdiction.

165. The debtor must be subject to the jurisdiction of the supreme courts of Scotland at the date of the petition if living, or at the date of death if deceased. (Ibid., s. 13, and notes.) As to nature of this jurisdiction, *vide* note *c.*

Productions.

166. The petitioning or concurring creditor must produce with the petition an oath or affirmation with reference to the debt and the accounts, and vouchers necessary to prove the debt. (Ibid., s. 21 and 49, and notes; *vide* Qualifications of creditors, *postea.*)

Court.

167. The application for sequestration falls to be made to the Court of Session, or the Sheriff of the county in which the debtor (if living) for the year preceding the date of the petition, or the date of death (if deceased), has resided or carried on business. (Ibid., s. 18, and notes, *postea.*)

Requisites of petition.

168. The petition may be to the Court of Session or the Sheriff. As to parties entitled to sign petition, *vide* s. 21, and notes.

Procedure if debtor concur.

169. The Court forthwith awards sequestration, and if the debtor is dead, ordains any successor who has made up a title to, or is in possession of, any part of his property, to convey the same to the trustee to be appointed. (Ibid., s. 29, and notes, *postea.*)

Procedure if without debtor's concurrence.

170. Where the petition is without the debtor's consent, or, if the debtor is dead, without the consent of the successor, the Court, 1. Orders citation of the debtor or his successor; 2. If desired, grants diligence to recover evidence of the notour bankruptcy, or other facts necessary to be established; and, 3. Directs intimation of the warrant and diet of appearance to be made in the 'Edinburgh Gazette.' (Ibid., s. 26 and 28, and notes, *postea.*) As to edictal citation, *vide* s. 28, note *a.* As to diet of appearance, *vide* s. 28, note *c.*

Case of a company.

171. When the debtor is a company, it is sufficient citation that a copy be left at the place where the business of the com-

pany is or was last carried on, provided a partner or a clerk or a servant of the company be there; and failing thereof, at the dwelling-house of any of the acting partners, and if the house of such partner cannot be found, by leaving a copy at the Office of Edictal Citations. (Act 1856, s. 27, and notes.) REQUISITES OF SEQUESTRATION.

172. If the debtor, or, if dead, his successor, do not show cause why the sequestration cannot be competently awarded, or do not instantly pay the debt or debts in respect of which he was made bankrupt, or produce written evidence of the same being paid or satisfied, and also pay or satisfy, or produce written evidence of the payment or satisfaction of the debt or debts due to the petitioner, or to any other creditor appearing and concurring in the petition, the Court awards sequestration *ut supra*. (Ibid., s. 30, and notes.) As to objections to sequestration, ibid., note *e*. As to consignation of debts, ibid., note *g*. As to costs of application, ibid., note *j*. Diet of appearance.

173. The date of the first deliverance on any petition for sequestration is held to be the date of the sequestration, although the sequestration be not actually awarded until a later date. (Ibid., s. 42.) Date of sequestration.

(2.) *Termination of the Bankruptcy.*

174. The deliverance awarding sequestration is not subject to review nor to recall, except as follows—viz.: 1. If awarded without the *debtor's* consent, then he or a qualified creditor may apply for recall within forty days. 2. If without the successor's consent, and where not awarded on the application of a mandatory authorised by the deceased debtor, then the successor, or a qualified creditor, or any person having interest, may also apply to the Lord Ordinary for recall of the sequestration within forty days; but if the citation was edictal, the application may be made before the advertisement for payment of the first dividend (ibid., s. 31, and notes, *postea*). 3. Nine-tenths in number and value of the creditors ranked on the estate may also at any time apply for recall (ibid., s. 32, and notes). 4. If it shall appear further to the Court of Session or to the Lord Ordinary, upon a petition by the accountant in bankruptcy, or any creditor or person having interest, presented at any time within three months after the sequestration, that a majority of the creditors in number and value reside in RECALL. Debtor or a creditor may apply within forty days. Also successor. Application after forty days. If an English or Irish debtor.

RECALL.

England or Ireland, and that his estate ought to be distributed under the Bankrupt or Insolvent Laws of England or Ireland, the Court may recall the sequestration (Act 1860, s. 2, *postea*).

Sequestration goes on.

175. Pending recall, the proceedings go on as if no petition had been presented, but steps fall to be taken to prevent the creditors applying for recall being prejudiced by the discharge. (Act 1856, s. 33, and notes.)

DEED OF ARRANGEMENT.

176. In place of following forth the sequestration, the creditors may resolve that the estate ought to be wound up under a deed of arrangement. (Ibid., s. 35, and notes.)

Resolution of creditors.

Report to Sheriff.

177. On such resolution being reported to the Lord Ordinary or the Sheriff, he may sist the sequestration. (Ibid., s. 36, and notes.)

Sist of sequestration.

Interim management.

178. Also he may make arrangements for the interim management of the estate. (Ibid., s. 37, and notes.)

Production of deed.

Intimation to creditors.

179. The deed of arrangement must be by four-fifths in number and value of the creditors, and may be a mere arrangement by way of composition (Act 1860, s. 6, *postea*); and must have been duly entered into and executed, and be reasonable (Act 1856, s. 38, and notes).

Approval of deed.

If not carried through procedure resumed.

180. If the deed of arrangement is not carried through, the Lord Ordinary or the Sheriff may make all necessary orders, by appointing meetings of creditors and otherwise, for resuming the necessary procedure in the sequestration. (Ibid., s. 39, and notes.)

Recording of judgment.

181. If the sequestration be declared at an end, the judgment declaring the same is to be recorded in the same manner as if the sequestration had been recalled. (Ibid., s. 40, and notes.)

COMPOSITION CONTRACT.

Offer at first meeting.

182. At the first statutory meeting the majority of creditors in number and nine-tenths in value may resolve that an offer of composition be entertained for consideration, and the trustee forthwith advertises the same, and that it will be decided upon at the meeting after the examination of the bankrupt, and transmits by post letters to the creditors notifying the same, and giving an abstract of the state of the affairs and of the valuation of the estate, to enable the creditors to judge of such offer and security. (Ibid., s. 137, and notes.) As to nature of security, *vide* s. 37, note *e*, *postea*.

Acceptance.

183. If the offer is accepted, a bond of caution is lodged in the hands of the trustee, and he reports the resolution of the

meeting to the Bill Chamber Clerk or Sheriff Clerk, in order that the approval of the Lord Ordinary or Sheriff may be obtained thereto. (Act 1856, s. 138, and notes.) COMPOSITION CONTRACT.

184. In like manner, at the meeting held after the examination of the bankrupt, or at any subsequent meeting called for the purpose, an offer of a composition may be made, and a majority in number and four-fifths in value of the creditors may resolve that the offer be entertained; and if four-fifths in value of the creditors accept the offer, a bond of caution falls to be lodged, and a report made, and a deliverance pronounced *ut supra*. (Ibid., s. 139, and notes.) Offer at subsequent meetings, &c.

185. Before discharge, the bankrupt, or other party offering the composition, has to make a declaration, or an oath, that he has made a full and fair surrender of his estate, and has not granted or promised any preference or security, or made or promised any payment, or entered into any secret or collusive agreement or transaction to obtain the concurrence of the creditors. (Ibid., s. 140, and notes, *postea*.) As to oath, *vide* note *a;* or reduction of discharge, *vide* note *d;* or challenge of preferences, *vide* note *o;* or effect of discharge, *vide* notes *b* and *k;* or reinvestiture, *vide* note *n;* or failure to pay composition, *vide* note *p*. Bankrupt to make declaration.

186. Before the deliverance approving of the composition is pronounced—1. The commissioners must audit the accounts of the trustee, and ascertain the balance due to or by him, and fix the remuneration for his trouble; and, 2. The expense attending the sequestration; and such remuneration must be paid or provided for to the satisfaction of the trustee and commissioners. (Ibid., s. 141, and notes, *postea*.) Audit of trustee's accounts.

187. Notwithstanding such offer of composition and proceeding consequent thereon, the sequestration continues, and the trustee proceeds in the execution of his duty. (Ibid., s. 142, and notes, *postea*.) Sequestration proceeds, notwithstanding offer.

188. If an offer of composition have been made and rejected, or have become ineffectual, no other offer of composition can be entertained unless nine-tenths in number and value of the creditors assent in writing to such offer, which offer must state the amount of composition and the terms of payment, and be subscribed by the cautioner proposed. (Ibid., s. 145.) New offer. DISCHARGE WITHOUT COMPOSITION.

189. The bankrupt may petition to be discharged of his debts—1. At any time after the second statutory meeting, if Petition after second meeting.

Discharge without composition.

every creditor concur in the petition; and, 2. On the expiration of six months from the date of the sequestration, if a majority in number and four-fifths in value of creditors concur; and, 3. On the expiration of twelve months, if a majority in number and two-thirds in value concur; and, 4. On the expiration of eighteen months, if a majority in number and value concur; and, 5. On the expiration of two years from said date without any consents; and if there be no appearance to oppose the same, the Court may refuse the application, if it shall appear that the bankrupt has fraudulently concealed any part of his estate or effects, or has wilfully failed to comply with any of the provisions of the Bankruptcy (Scotland) Act 1856, or may pronounce a deliverance finding the bankrupt entitled to a discharge; but if appearance be made by any of the creditors, or by the trustee, the Court judges of any objections, and either finds the bankrupt entitled to his discharge, or refuses it, or defers the consideration of the same, and may annex conditions; but no discharge can be granted to the bankrupt where he is only entitled to apply for a decree of cessio, and it is not competent for the bankrupt to present a petition for his discharge, or to obtain any consent of any creditor to such discharge, until the trustee shall have prepared a report with regard to the conduct of the bankrupt; and such report must be produced in the proceedings for the bankrupt's discharge, and be referred to by its date, or by other direct reference, in any consent to his discharge. (Act 1856, s. 146, and notes, *postea;* Act 1860, s. 3, *postea.*)

After six months.

After twelve months.

After eighteen months.

After two years.

Appearance in court.

Objections.

If only entitled to cessio.

Trustee's report.

Declaration by bankrupt.

190. If the bankrupt be found entitled to his discharge, he makes a declaration, or oath, that he has made a full and fair surrender of his estate, and has not granted or promised any preference or security, nor made or promised any payment, nor entered into any secret or collusive agreement or transaction to obtain the concurrence of any creditor to his discharge; and the Lord Ordinary or the Sheriff, on being satisfied with the same, pronounces a deliverance discharging the bankrupt of all debts and obligations contracted by him, or for which he was liable at the date of the sequestration. (Ibid., s. 147; Act 1857, s. 7, *postea.*)

Discharge.

Crown debts.

191. The Act does not discharge any prisoner with respect to any debt due to the Crown; or any person for any offence committed against the public revenue, or at the suit of any

public officer upon any bail-bond entered into for the appearance of any person prosecuted for any such offence. (Act 1856, s. 148.) DISCHARGE WITHOUT COMPOSITION.

192. If the debtor shall die after the petition for sequestration is presented, the proceedings are, notwithstanding, to be followed out. (Ibid., s. 34.) Death of bankrupt. Sequestration to be followed out.

193. No process of sequestration falls asleep or is liable to be dismissed under 16 & 17 Vict. c. 80, s. 15. (Ibid., s. 43, *postea.*) PROCESS DOES NOT SLEEP.

194. A majority in number and value of creditors, if it shall appear to them that the estate is not likely to yield free funds for division after payment of preferable debts and expenses beyond £100, may resolve that the bankrupt shall only be entitled to apply for and obtain a decree of cessio; and such resolution is reported to the Lord Ordinary or the Sheriff, and being confirmed, the bankrupt has no right to a discharge in the sequestration, but is entitled to apply for a decree of cessio. (Ibid., s. 168, and notes.) DECREE OF CESSIO MAY BE GRANTED. Resolution of creditors.

(3.) *Evidence of the Sequestration.*

195. The petition for sequestration, with deliverance, or a copy thereof certified by the Clerk of the Bills, or by the Sheriff Clerk, is sufficient *primâ facie* evidence of the sequestration in any Court within Scotland. (2 Dickson on Evidence, p. 629.) EVIDENCE OF THE SEQUESTRATION. Within Scotland.

196. In regard to the rest of Her Majesty's dominions, all deliverances under the Act, purporting to be signed by any of the Judges of the Court of Session or by the Sheriff, as well as extracts or copies, or from the books of either Court, purporting to be signed or certified by any Clerk of Court, or extracts from or copies of registers purporting to be made by the keeper thereof or extractor, must be judicially noticed by all Courts and Judges in England, Ireland, and Her Majesty's other dominions, and must be received as *primâ facie* evidence. (Act 1856, s. 174, *postea.*) In rest of Her Majesty's dominions.

197. All deliverances may be either printed or in writing, or partly both. (Ibid., s. 175.) May be written or printed.

(4.) *Status or Personal Rights of Bankrupt.*

STATUS OF BANKRUPT.

Divestitures.

198. The sequestration vests the trustee in the bankrupt's property, but confers no right over his person (Act 1856, s. 102); and the discharge only frees the bankrupt of his obligations as a debtor, but does not dissolve the other ties and relations of life (ibid., s. 140 and 147).

Effect on domestic relations.

199. Accordingly, the sequestration does not in any way affect the domestic relations of husband and wife, or parent and child.

Official relations.

200. Neither does it affect directly the official relation of the bankrupt; *e.g.*, he does not necessarily lose, 1. A public office—as that of judge, clergyman, sheriff-clerk, town-clerk, or session-clerk; or, 2. A private office—as that of trustee, factor, tutor, curator, or director. (1 B. C. 125.)

Political status.

201. Neither, 1. Does the bankrupt lose his political status of a peer of the realm; but, 2. It is not free from doubt whether, as a member of the House of Commons, a Scotch bankrupt would vacate his seat under 52 Geo. III. c. 144.* 3. The bankrupt, however, loses his electoral privileges, as they are based upon a property qualification. (*Yuile*, 2d Dec. 1865.)

Electoral privileges.

Industrial relations.

Founded on a right of property.

202. As to the industrial or commercial relations of life, a distinction falls to be observed between those that are dependent on property and those which are not. 1. Where the personal relation is the result or consequence of a patrimonial right or relation, then it is lost to the bankrupt in two events—viz., in the event of an irritancy in the constitution of the right, such as occurs frequently in leases where they are forfeited by the occurrence of the tenant's bankruptcy (*Richardson*, 24th June 1835; 1 B. C. 81); and also in the event of the trustee taking up the property upon which the personal relation is contingent, as in the case of his adopting a feu-right (2 B. C. 413). In both these cases, the personal relations of

* The above Act is not expressly confined to England, but it is plain that Scotland has not been kept in view in the framing of it. It must be observed, however, that it is now repealed, so far as England is concerned, by the English Bankruptcy Act, 1869 (32 & 33 Vict. c. 71, s. 120, &c.), which enacts that 52 Geo. III. c. 144 is repealed "except so far as it relates to Scotland and Ireland." (*Vide* Schedule of Statutes repealed.) This seems a recognition by the Legislature of the application of the Act to Scottish members of the House of Commons.

landlord and tenant, and of superior and vassal, are dissolved, in so far as the bankrupt is concerned, in consequence of the property upon which they were founded having been assumed by the trustee. The same rule applies to the relations of buyer and seller, mortgager and mortgagee, insurer and insured, and many others. But where the trustee cannot, or will not, take up the property, and where the right is not lost by an irritancy, then the bankrupt still continues to hold the right, as it does not appear that, under any circumstances, does the sequestration *eo ipso* dissolve a contract where the bankrupt or his creditors are willing to perform his part (1 B. C. 80 and 447). On the other hand, the bankrupt has the option of rejecting the contract, and in the event of his doing so, then the other party may rank upon the estate for damages (2 B. C. 413); and in the event of the bankrupt being discharged, his discharge will wipe out all his liabilities under the contract (Act 1856, s. 140 and 147). 2. Where the relation is purely industrial and personal, and not dependent upon property or capital, the same rule above stated applies — viz., that the sequestration does not seem *per se* to dissolve the contract, no matter whether the contract be one between master and workman for the execution of a given piece of work, or one between principal and agent, or agent and client, for the execution of business *de die in diem*, or one between copartners or master and apprentice, or master and servant, for the employment of skill and labour during a fixed period of time. In all these cases, the parties contracting with the bankrupt appear bound to fulfil their contracts, provided he or the creditors offer to fulfil his part (2 B. C. 413). They are not, however, bound to do more—*e.g.*, the workman is only bound to finish the job, and the agent is only bound to complete that part of the agency in which he was engaged. The copartner, apprentice, and servant, however, seem bound to complete the parts of their respective contracts to which they are bound, unless they get the authority of a competent court to dissolve the contract —a course which they are perfectly entitled to take; for while, on the one hand, they are exposed to the disadvantage of having the contract thrown up by the bankrupt, and their whole remedies converted into a ranking upon his estate; yet on the other hand, as these different contracts imply a *delectus personæ*, they are entitled to the advantage of applying to the

Status of bankrupt.

Not founded on property.

STATUS OF BANKRUPT.

Court to free them of the contract, on the ground that they never would have entered into it if they had contemplated so important an occurrence as the bankruptcy of the party with whom they were contracting (2 B. C. 413.)

(5.) *Rights of Property in the Bankrupt.*

BANKRUPT'S RIGHTS.

Divestiture.

203. The bankrupt is divested, as at the date of the sequestration, of all property, heritable or moveable, wherever situated, and all rights, powers, and interests therein, capable of legal alienation or of being affected by diligence or attached for debt. (Act 1856, s. 29, 30, and 4, and notes, *postea*).

Subsequent acquisitions.

204. Also of all such property which may thereafter belong to him before the date of his discharge. (Ibid., s. 103.)

Recording of abbreviate of sequestration.

205. The party applying for sequestration presents or transmits an abbreviate of the petition and deliverance to the keeper of the Register of Inhibitions at Edinburgh, who is forthwith to record the same in the Register of Inhibitions; and which has the effect of an inhibition and of a citation in an adjudication of the estate of a debtor at the instance of the creditors afterwards ranked on the estate; and it is not competent to stop such effect, or the effect of the sequestration, after it is awarded, by paying the debt or debts in respect of which it was applied for or awarded. (Ibid., s. 48, and notes, *postea*.)

Has effect of an inhibition and citation in an adjudication.

Privilege of opening his letters.

206. The bankrupt may even lose the privilege of opening his letters sent by post; for the trustee is authorised to apply for an order upon the post-office officials to have them, for a limited time, delivered to the Sheriff Clerk or trustee, to be opened in presence of the Sheriff. (Ibid., s. 179.)

Money.

207. As to money or bank-notes in his own possession, it appears very doubtful that they can be attached. They seem not to be poindable (2 B. C. 63). The only remedy to the creditors in this case is the indirect remedy of imprisonment or refusal of a discharge.

Wearing apparel.

208. The bankrupt retains the necessary wearing apparel of himself, his wife, and family. (Ibid., s. 95.)

Alimentary funds.

209. He likewise retains alimentary estates or funds where they have been vested in him expressly as such by third parties, and such other estates or funds as are by law declared not subject to the diligence of creditors, such as the annuities

of the widows of the clergy and others (1 B. C. 129 and 130). The only remedy in this case is imprisonment or the refusal of a discharge, in order to attach any surplus that remains after deducting a moderate provision for subsistence (1 B. C. 130). BANKRUPT'S RIGHTS.

210. As to offices—1. The bankrupt loses such as are heritable or patrimonial, but not such as are personal (1 B. C. 125). 2. The salaries of the latter offices are, however, in certain cases, attachable, in so far as not alimentary (1 B. C. 127). 3. At common law, any government pension, or pay, half-pay, or salary, is not attachable ; but under the sequestration the same may be attached (Act 1856, s. 149). Offices. Salaries. Pension, &c.

211. The bankrupt retains honours and dignities. (1 B. C. 124.) Honours and dignities.

212. The bankrupt likewise retains the copyright of all unpublished literary compositions. (1 B. C. 119.) Copyrights.

213. The bankrupt may retain the tenant's right in a lease where the creditors are excluded (1 B. C. 80), unless the landlord chooses to accept the trustee (1 B. C. 77 ; *Barrows*, 25th May 1852); but, of course, he is subject to have all future acquisitions seized by the trustee (Act 1856, s. 103). Leases where creditors excluded.

214. The bankrupt has the right to all claims, estates, and actions abandoned by the trustee. (Ibid., s. 29, note *h*.) Abandoned rights.

215. There is nothing to prevent the bankrupt from acquiring estates after sequestration, either by industry or succession ; but they are liable to be attached by the trustee. (Ibid., s. 103, and notes.) New acquisitions.

216. By composition settlement duly completed, the bankrupt becomes reinvested in all the estates of which he had been previously divested (ibid., s. 140), and may also acquire the right of reducing preferences (ibid., s. 140, note *o*). Retrocession.

217. The bankrupt has a right to any surplus after payment of his debts, with interest, and charges of recovering and distributing the estate. (Ibid., s. 155.) Surplus.

BANKRUPT'S POWERS.

(6.) *Powers of Bankrupt.*

218. The bankrupt (or debtor, as he may be called at this stage) may apply for sequestration. (Ibid., s. 13.) May apply for sequestration.

219. He may also appeal against a sequestration to the Court of Session or Lord Ordinary, where there are more May appeal against sequestration.

BANKRUPT'S POWERS.

sequestrations than one awarded against him, with a view to a remit of them all being made to the same Sheriff. (Act 1856, s. 19.)

May apply to Court of Session if Sheriff refuse to sequestrate.

220. He may also apply to the Court of Session for sequestration, although it has been refused by the Sheriff. (Ibid., s. 19.)

May oppose sequestration.

221. He may also oppose sequestration. (Ibid., s. 30.)

Litigations.

Process sisted till trustee called.

May take up abandoned rights.

Finds caution for costs.

222. After divestiture by sequestration, the bankrupt cannot, of course, litigate anent his estates in competition with his trustee; and any case in which the bankrupt is engaged, relative to his estate, will be sisted till intimation is given to the trustee (*Hallowell*, 17th Feb. 1843). But the trustee may abandon a right, which the bankrupt will then be entitled to take up and prosecute (*M'Kersy*, 20th June 1850; *Horn*, 9th Jan. 1872). In that case he will be held bound to find caution for the expenses both before and after the bankruptcy; and in the case of *Jackson*, 22d Nov. 1862, he was held liable in costs prior to sequestration, even although he had in the meantime got a discharge by composition-contract. But in the following cases, where he appeared as *defender*, he was held not bound to find caution for expenses: 1. In an action of damages for seduction (*Robertson*, 19th Nov. 1833). 2. In an action as to irritancy of a lease where the trustee's right is excluded (*Fairlie's Trustees*, 6th March 1830, revd. 1st March 1833). 3. In an application for recall of his sequestration (*Hooper*, 20th July 1850); though it is different where he is applying for a discharge (*Overbury*, 9th July 1863). 4. In a case of fraud alleged against him (*M'Intosh*, 29th June 1826). 5. In order to protect his person from imprisonment (*Clark* and *Ross*, 20th May 1813); or obtain liberation (*Young*, 13th March 1875). 6 In a suspension of a decree in absence (*Stephen*, 31st May 1860). In this case it was laid down that the matter of caution was entirely a matter for the discretion of the Court. Indeed, even as *pursuer*, he may not always be held bound to find caution for expenses—*e.g.*, where he has raised a declarator to have it found that certain of his creditors had discharged him prior to sequestration, if he has made out a *primâ facie* case to that effect (*M'Alister*, 7th Nov. 1873).

Not generally when defender.

May apply for recall.

223. The bankrupt may apply for recall. (Act 1856, s. 31, *postea*.)

May report resolution

224. The bankrupt may report to the Court a resolution of

the creditors to wind up the estate by deed of arrangement, and may apply for a sist of the sequestration. (Act 1856, s. 36.) BANKRUPT'S POWERS.

225. The bankrupt may apply to the Court by whom sequestration is awarded for liberation from prison; and if refused, it is competent to make a new application, with consent of the trustee and commissioners. (Ibid., s. 45.) To wind up by deed of arrangement. May apply for liberation.

226. The bankrupt may appeal the judgment of the Sheriff, if refusing liberation, to the Court of Session, or, during vacation, to the Lord Ordinary. (Ibid., s. 46.) May appeal against refusal.

227. The bankrupt may apply to have the judicial factor, the trustee, and commissioners decerned to account for their intromissions and management. (Ibid., s. 86.) May call factor, &c., to account.

228. If the bankrupt has been committed to prison by the Sheriff upon a refusal to answer questions or produce documents, he cannot bring the warrant under review, but he may apply to the Lord Ordinary for recall. (Ibid., s. 93.) May apply for recall of warrant of imprisonment.

229. The bankrupt, before the close of his examination, may make such additions to or alterations upon the state of his affairs as may have occurred to him to be necessary to give a full view of his affairs. (Ibid., s. 95.) May make alterations on state of affairs.

230. All payments and preferences or securities obtained by or granted to prior creditors, and all acts done or deeds granted by the bankrupt after the date of the sequestration and before his discharge, out of or in relation to the estate (unless with the consent of the trustee), shall, in the event of sequestration being awarded, be null and void. (Ibid., s. 111.) Cannot grant deeds after sequestration.

231. The bankrupt may make an offer of composition at the first meeting. (Ibid., s. 137.) May offer composition at first meeting.

232. Also at the second statutory meeting, or at any subsequent meeting called for the purpose. (Ibid., s. 139.) Also at second meeting.

233. The bankrupt may appeal against the commissioners' deliverance auditing the accounts of the trustee, and ascertaining the balance due by or to him, and fixing the remuneration for his trouble. (Ibid., s. 141.) May appeal against commissioners' audit.

234. The bankrupt may call the trustee and his cautioner to account for the trustee's intromissions and his other acts, notwithstanding the statutory discharge which is pronounced in the trustee's favour, when the estate is wound up by an offer of composition. (Ibid., s. 142.) May call trustee to account, notwithstanding discharge.

235. The bankrupt is not entitled to object to any debt which he has given up in the state of his affairs as due by Must object to debt or

BANKRUPT'S POWERS.

security before discharge.

him, or admitted, without question, to be reckoned in the acceptance of the offer of composition, nor to object to any preference or security held by any creditor, unless in the offer of composition such debt or security or preference shall be stated as objected to, and notice in writing given to the creditor in right thereof. (Act 1856, s. 143, and notes, *postea.*)

New offer where previous one fallen.

236. The bankrupt cannot make another offer of composition, unless nine-tenths in number and value of all the qualified creditors shall assent in writing to the offer, where any previous offer has been made and rejected or become ineffectual. (Ibid., s. 145.)

May apply for discharge without composition.

237. The bankrupt is entitled to apply for discharge, at any time after the second statutory meeting, up to the expiry of two years from the sequestration, provided he has the assent of certain of his creditors, and after that date without their consent, for a discharge without composition. (Ibid., s. 146.)

Cannot grant preferences, &c.

238. All preferences granted or promised, and all collusive agreements for facilitating the bankrupt's discharge, are null and void. (Ibid., s. 150.)

May appeal against resolutions of creditors, &c.

239. The bankrupt may appeal against the resolutions of meetings of creditors, and against the deliverances of the trustee or commissioners. (Ibid., s. 169, and notes, *postea.*)

May appeal against deliverances of Sheriff, &c.

240. He may also appeal against the deliverances of the Sheriff (ibid., s. 170); also against the judgments of the Lord Ordinary (ibid., s. 171); also against the judgments of the Inner House (ibid. s. 173).

May compel trustee, &c., to perform duties.

241. Generally where he has an interest he may apply to the Court for an order to compel the trustee or judicial factor or commissioners to perform their several duties. (Ibid., s. 138, note *g.*)

BANKRUPT'S DUTIES.

(7.) *Duties of Bankrupt.*

To insert notice in Gazette.

242. Where the bankrupt is petitioner for sequestration, he ought to insert the notice in the Gazette of the remit of the process. (Ibid., s. 19, and notes, *postea.*)

To send certified copy of petition, &c., to Sheriff Clerk.

243. Also in that case he ought to transmit to the Sheriff Clerk of the county to the Sheriff of which the sequestration is remitted, the certified copy of the petition and deliverances awarding the sequestration. (Ibid., s. 43.)

244. He ought also in that case to have the abbreviate of the sequestration recorded in the Register of Inhibitions, (Act 1856, s. 48.) BANKRUPT'S DUTIES.

245. The bankrupt makes up, and at the meeting appointed for the election of a trustee delivers to the clerk of such meeting, a state of his affairs. (Ibid., s. 81.) To have abbreviate recorded. To make up state of affairs.

246. The bankrupt must at all times give every information and assistance necessary to enable the trustee to execute his duty. (Ibid., s. 81.) To assist trustee, &c.

247. The bankrupt must undergo examination as often as the Sheriff shall see fit to order upon the application of the trustee. (Ibid., s. 88.) To undergo examination.

248. The bankrupt must answer all lawful questions relating to the affairs of the estate. (Ibid., s. 91.) To answer lawful questions.

249. The examination of the bankrupt is taken upon oath, and (except in the cases wherein a commission is allowed to be granted) takes place before the Sheriff, and may be written or dictated by the Sheriff, and authenticated in the ordinary way as a deposition. (Ibid., s. 92.) Mode of taking examination.

250. Any latent partner of a sequestrated company must disclose himself before the examination, otherwise he may forfeit the benefits of the Act. (Ibid., s. 94.) Latent partner of a company.

251. After the examination is concluded, the bankrupt takes the usual statutory oath (or affirmation, as the case may be), which is to be engrossed in the sederunt-book, and subscribed by the Sheriff and bankrupt as relative to the state of his affairs. (Ibid., s. 95, and notes, *postea*.) For form of oath, *vide* s. 95. Oath.

252. The bankrupt must immediately notify to the trustee when any estate has been acquired by him, or descended or reverted or come to him. (Ibid., s. 103.) To notify subsequent acquisitions.

253. The bankrupt must, if required, grant all deeds necessary for recovering his property, and feudally vesting his heritable estate in the trustee. (Ibid., s. 105.) To grant deeds.

(8.) *Law Procedure against Bankrupt.*

PROCEDURE AGAINST BANKRUPT.

254. The bankrupt must at all times give every information and assistance necessary to enable the trustee to execute his duty; and if he fail to do so, or to grant any deed which may be requisite for the recovery or disposal of his estate, the Imprisonment for not granting deeds, &c.

PROCEDURE AGAINST BANKRUPT.

trustee may apply to the Sheriff to compel him to give such information and assistance and to grant such deeds. (Act 1856, s. 81.)

Warrant for him to attend for examination.

255. On the trustee's application, the Sheriff issues his warrant for the bankrupt to attend for examination. (Ibid., s. 87.)

Warrant to apprehend him for examination.

256. It is competent to grant a warrant to apprehend the bankrupt, and bring him before the Sheriff for examination, even from prison or the sanctuary; and the Sheriff may, on the application of the trustee, order the bankrupt to be examined as often as he shall see fit. (Ibid., s. 88, and notes.) As to grounds of application, *vide* s. 88, note *c*, *postea*.

Where bankrupt is out of Scotland.

257. If the bankrupt be in any part of Great Britain and Ireland other than Scotland, the Lord Ordinary may grant warrant to apprehend and transmit him to the place of his examination, and for his re-transmission after examination. (Ibid., s. 89.)

Warrant of imprisonment if he refuse to answer questions, &c.

258. If the bankrupt shall refuse to be sworn, or to answer, to the satisfaction of the Sheriff, any lawful question put to him by the Sheriff or trustee, or by any creditor with the sanction of the Sheriff, or without lawful cause shall refuse to sign his examination, or to produce books, deeds, or other documents in his custody or power relating to the estate, the Sheriff may commit him to prison. (Ibid., s. 93, *postea*.)

Creditors may authorise trustee to proceed against him if guilty of fraud.

259. If it shall appear that the bankrupt has not made a full and fair surrender of his estate, or that he has disposed of or concealed any part of his funds to the prejudice of his creditors, or that his bankruptcy has been fraudulent, the creditors may authorise the trustee to proceed against him in terms of law at the expense of the estate. (Ibid., s. 97, and notes, *postea*.)

Discharge to be annulled if he has granted preferences, &c.

260. If the bankrupt shall have been personally concerned in, or cognisant of, the granting, giving, or promising, any preference, gratuity, security, payment, or other consideration, or in any secret or collusive agreement or transaction with a view to his discharge, he forfeits all right to a discharge, and all benefits under the Act; and such discharge is to be annulled. (Ibid., s. 151.)

Information to Lord Advocate.

261. If the accountant suspect fraudulent conduct by the bankrupt, he is entitled to give information to the Lord Advo-

cate, who is to direct such inquiry, and take such proceedings therein as he shall think proper. (Act 1856, s. 162.) PROCEDURE AGAINST BANKRUPT.

262. In addition to the above, the bankrupt is of course subject to all manner of criminal procedure to which his conduct may expose him. Amenable to criminal law.

263. He is also subject to all actions (*Walker*, 14th May 1835) and diligence (*Neilson*, 2d Feb. 1843) at the instance of his creditors, unless he is protected, and until his discharge. Subject to process and diligence if not protected.

SECT. 2.—OF ORDINARY CREDITORS.

(1.) *Requisites for Petitioning or Concurring in a Petition for Sequestration.*

264. The debt of the creditor must be not less than £50, and not less than £70 if there be two creditors, and not less than £100 if there be three or more; and the debts must not be contingent. (Act 1856, s. 14, and notes, *postea.*) CREDITORS' QUALIFICATIONS FOR PETITIONING.

265. An oath must be made to the verity of the debt (ibid., s. 21), and must state what other persons are liable for the debt, or any part thereof, and specify any other security (ibid., s. 22, and notes, *postea*). Amount and nature of debt. Oath must specify securities, &c.

266. An affirmation will be sufficient in the case of all who have conscientious scruples to the taking of an oath. (Ibid., s. 21, note *g*, *postea.*) Affirmation.

267. When made by the creditor himself, the oath must be one of absolute knowledge; but where by any party representing the creditor, then it may be one of credulity. (Ibid., s. 23 and 25). Oath of credulity.

268. Where the creditor is in Great Britain or Ireland, he shall make the oath himself; but if not, then he may either do so himself, or his known agent. (Ibid., s. 22 and 23.) Where creditor out of kingdom.

269. When the creditor is a corporation, the oath made by the principal officer is sufficient, or, in case of other companies, an oath by a partner is sufficient. (Ibid., s. 25.) When creditor a corporation.

270. Where any creditor shall be under any legal incapacity, then an oath by his authorised guardian is sufficient. (Ibid., and notes, *postea.*) Where creditor under incapacity.

271. The oath must be taken before a magistrate (ibid., s. 22); but out of the kingdom, it must be taken before a person qualified to administer oaths in the country where he resides Before whom oath to be taken.

CREDITORS' QUALIFICATIONS FOR PETITIONING.

(he being certified to be qualified by a British minister or consul, or by a notary public.) (Act 1856, s. 23.)

When debtor in sanctuary.

272. If a creditor is petitioner, he must, when the bankruptcy is founded on his retiring within the sanctuary, swear that he believes the debtor to have so retired. (Ibid., s. 24.)

If debtor dead.

273. If the debtor is deceased, and a creditor is petitioning, he must depone as to the place where the debtor resided or had a dwelling-house or carried on business in Scotland at the time of his death, and whether he was then owner of estates in Scotland. (Ibid., s. 24.)

Production of vouchers.

274. There must be produced such vouchers as prove the debt referred to. (Ibid., s. 49.)

(2.) *Requisites for Voting and Acting.*

CREDITORS' QUALIFICATIONS FOR VOTING.

275. The requisites for petitioning or concurring — viz., paragraphs 265, 266, 267, 268, 269, 270, and 271, *supra*—are all requisites for voting and acting. (Ibid., s. 49 and 50.)

Certain requisites for petitioning are requisite for voting.

276. The creditor, before voting or acting, is bound to produce at the meeting, or in the hands of the trustee, his oath, and the vouchers referred to. (Ibid., s. 49 and 50.)

Production of oaths and vouchers.

Claim for interest.

Deduction of interest.

Also discount.

Specification of interest, &c.

277. A creditor is not entitled to claim for any interest accruing after the sequestration; and if a debt is not payable till after that date, the creditor deducts interest; and he also deducts discount beyond legal interest to which his claim may be liable; but he is not bound to specify separately the amount of interest due, or of any interest or discount deducted therefrom, or to specify therein any accumulated sum of principal and interest; and if there be any residue of the estate after discharging the debts ranked, he is entitled to claim the full interest. (Ibid., s. 52.)

Where debt contingent.

278. When the claim of a creditor depends upon a contingency unascertained at the date of lodging his claim, he must apply to the Sheriff, or to the trustee elected, to put a value on such debt; and the creditor votes in respect of such value, and no more. (Ibid., s. 53.)

Where debt is an annuity.

279. Any creditor in respect of an annuity must apply to the Sheriff, or, if elected, to the trustee, to put a value on such annuity; and such creditor votes in respect of such value, and no more. (Ibid., s. 54.)

280. If a creditor hold a security over any part of the

estate, he must put a specified value on such security, and deduct such value from his debt, and specify the balance; and if the estate, he must specify in his oath the free proceeds therefrom, and specify the balance, and he votes in respect of the balance, and no more; and in questions as to the disposal or management of the estate subject to his security, he votes as a creditor for the full amount of his debt. (Act 1856, s. 59.)

CREDITORS QUALIFICATIONS FOR VOTING.

Must value and deduct securities.

281. When a creditor has an obligant bound with but liable in relief to the bankrupt, or holds any security from an obligant liable in relief to the bankrupt, or any security from which the bankrupt has a right of relief, he in his oath puts a specified value on the obligation or security to the extent to which the bankrupt is entitled to relief, and he deducts such value from his debt and specifies the balance; and he votes in respect of such balance, and no more. (Ibid., s. 60.)

Also obligations from which bankrupt has a right of relief.

282. A creditor on the estate of a company is not bound to deduct the value which he may be entitled to draw from the estates of the partners; but if he claim on the estate of a partner, he must, before voting, in his oath put a specified value on his claim against the company, and the other partners, in so far as they are liable to relieve such partner, and deduct such value from his debt and specify the balance; and he votes for the balance, and no more. (Ibid., s. 61.)

Valuation and deduction of claim on company estate.

283. Any person who shall acquire a debt after the sequestration, otherwise than by succession or marriage, and the wife of the bankrupt, and any trustee for her, are not entitled to vote in the election of trustee or commissioners. (Ibid., s. 64.)

Where debt acquired after sequestration.

284. When any oath is not properly framed the Sheriff calls upon the creditor to rectify it, unless it appear to have been made for some improper or fraudulent purposes, or where injury can be qualified by other creditors. (Ibid., s. 51.)

Correction of claim.

285. Where a creditor has put a value on any security or obligation, he may at any time before he has been required to assign the same to the creditors, correct such valuation by a new oath. (Ibid., s. 62.)

Creditor may make new claim.

CREDITORS' QUALIFICATIONS FOR RANKING.

(3.) *Requisites for Ranking.*

Certain requisites for petitioning are requisites for ranking.

286. The requisites for petitioning or concurring—viz., paragraphs 265, 266, 267, 268, 269, 270, and 271, *supra*—are all requisites for ranking. (Act 1856, s. 49.)

CREDITORS' QUALIFICATIONS FOR RANKING.

287. The requisites for voting and ranking—viz., paragraphs 277, 278, 279, and 280, *supra*—are all requisites for ranking. (Act 1856, s. 52, 53, 54, and 51.)

Also certain requisites for voting.

Time for lodging claims.

288. To entitle any creditor to payment of the first dividend, he must produce his oath and vouchers, at least two months before the time fixed for payment of said dividend, or one month before said time when it shall have been accelerated, or at least two months before the time fixed for payment of subsequent dividends. (Ibid., s. 123, and notes, *postea*.)

Time for establishing claim, &c.

289. If not in possession of such vouchers, he must state the cause of their not being produced, and in whose hands the same are; which oath entitles him to have a dividend set apart till a reasonable time be afforded for production thereof, or for otherwise establishing his debt. (Ibid., s. 50.)

Equalising dividend.

290. Again, if the creditor has not produced his oath and grounds of debt in time to share in the first, but in time to share in the second dividend, he is entitled, on this latter occasion, to receive an equalising dividend; and the same rule applies to subsequent dividends. (Ibid., s. 123.)

When creditor abroad.

291. Lastly, when any creditor not resident within Great Britain or Ireland at the sequestration, or within five months thereafter, lodges his oath and grounds of debt fourteen days previous to any dividend, though not in time to participate therein, the trustee makes such deduction from the divisible fund as shall be equal to that creditor's dividend; and the sum so deducted the creditor may thus claim. (Ibid., s. 123 and 124.)

Value and deduct securities.

Trustee entitled to assignation.

292. When the creditor holds a security over any part of the bankrupt's estate, he must put a value thereon, and deduct such value from his debt, and specify the balance; and the trustee, with consent of the commissioners, is entitled to an assignation of such security at the expense of the estate on payment of the value so specified, or to reserve to such creditor the full benefit of such security. (Ibid., s. 65.)

Valuation of claim on company estate.

293. When a creditor claims on the estate of a partner in respect of a debt due by the company, the trustee on the estate of such partner must put a valuation on the estate of the company, and deduct from the claim of such creditor such estimated value, and pay to him a dividend only on the balance. (Ibid., s. 66.) As to rules of Ranking, *vide* par. 322, *postea*.

(4.) *Evidence of Qualifications of Creditors.*

Evidence of creditors' qualifications.

294. The oaths prepared in manner before mentioned fall to be produced in the process for sequestration, or at a meeting of creditors, or in the hands of the trustee. (Act 1856, s. 21 and 49.)

Production of oaths.

Accounts and vouchers.

295. There must be produced with such oaths the accounts and vouchers necessary to prove the debts referred to in such oaths. (Ibid., s. 21 and 49.)

Loss of oaths, &c.

296. The creditor will not lose his qualification by such accidents as the destruction of his oath or vouchers by fire while in possession of the trustee. (Ibid., s. 49, note *f, postea.*)

Vouchers borrowed up.

297. And although the creditor has borrowed up the vouchers of his debt, he will still be permitted to act. (Ibid., s. 49, note *f, postea.*)

Where claim once found bad.

298. But where a claim is once found bad by a final interlocutor, it will not again support a vote. (Ibid., s. 21, note *g, postea*). As to sufficiency of accounts and vouchers, *vide* ibid., s. 49, note *i, postea.*

Claim may be cut down.

299. Notwithstanding that the accounts and vouchers so produced are *prima facie* sufficient to support the claim of the creditor in terms of the Statute, still they may be cut down.

Rules of evidence are peculiar.

In petitioning, voting, and ranking, peculiar rules of evidence are followed, and the reason of this is that the inquiries themselves are peculiar. It is only in some cases that the sequestration process is the same as an ordinary law process where two parties are at issue—*e.g.*, the case of a bankrupt's application for discharge where an opposing creditor is allowed to establish his claims by reference to the bankrupt's oath (*Campbell*, 11th March 1856.) In most cases they are inquiries in which various parties are concerned — the bankrupt, the creditors collectively or individually, and perhaps competing candidates for a trusteeship. In another respect these differ from ordinary litigations; they require the most summary despatch. Under such circumstances, two rules have been introduced for such cases into the working of all the Sequestration Acts. The *first* is, that a reference to oath is incompetent; the *second* is, that parole proof is also incompetent except in rankings. "It is not the proper function of "the Court to inquire into the constitution of the debt, and "the proper sanctions for the sufficiency of each vote are con-

Reference to oath incompetent.

Also parole proof, except in rankings.

EVIDENCE OF CREDITORS' QUALIFICATIONS.

"formity to the statutory requisites on the one hand, and the "punishment of perjury for rearing up a false claim on the "other" (per Lord President Blair in *Furlong*, 1st Feb. 1809).

Cases.

1. A reference to oath of bankrupt was held incompetent (*Dyce*, 19th Dec. 1846; *Adam*, 29th Jan. 1847; *Thomson*, 10th July 1855); also a reference to oath of claimant is incompetent (*Anderson*, 9th July 1847); also the judicial examination of the candidate for the trusteeship (*Cowper*, 10th March 1847).

Production of writs.

2. A proof at large is never allowed except in investigating claims for ranking (2 B. C. 347; *Robb*, Dec. 1806; *Goddard*, Dec. 1804; 2 B. C. 347, note *c*; *Kerr*, 22d Feb. 1849). But in no case does the Court refuse proof by the production of writs, although in questions of voting they only allow diligence for the recovery of specific documents to prove specific objections. In *Allan*, 1st Feb. 1823, cautionary obligations were produced to support counter-claims, and the oath was rejected. In *Hay*, 5th Feb. 1850, the Court allowed production by the competitor of receipts, in order to cut down a claim. In *Mein*, 6th March 1824, the Court unanimously approved of the Sheriff's judgment, "that he was only bound "to grant diligence for any receipt or voucher which instantly "destroys or disproves the debt in whole or in part, but not "for the purpose of expiscating the constitution and ultimate "validity of the debt, not only as to the fact, but as to the "law." And, again, in *Blyth*, 8th July 1825, it was held no objection to a vote for trustee that the claim on investigation might prove false where all the requisites of the Statutes were complied with. In *M'Ewan*, 7th Dec. 1842, the Sheriff allowed a diligence, and a letter was recovered from the bankrupt showing that a claimant held securities which were not valued. The claim was rejected. The Court excluded all evidence as to securities not specified, all general correspondence as to those which were specified, and all general inspection of books. In *Learmonth*, 18th July 1845, where, in opposing a sequestration, an averment was made that all the securities were not specified, it was held not relevant, the oath being specific and complete, and the Court refused to go into the merits. In *Rhind*, 5th Dec. 1846, a diligence for recovery of writs, affording instant proof of the validity or invalidity of votes, was allowed, but not a proof at large. In *Aitken*, 18th June 1848, it was held that an oath *ex facie* valid

Diligence for recovery of writs.

Nature of diligence allowed.

must be received, though it was urged that the creditor had improperly parted with securities which he held, and thereby lost his claim against the bankrupt, who was merely a cautioner in the transaction. The same was held in *Hay*, 5th Feb. 1850, where an account was claimed, although two receipts for a payment to account were produced for which no credit was given. But in this case it did not very clearly appear that the payments were to account of the debt claimed, and besides, the receipts were unstamped. In *Menzies*, 5th June 1851, a diligence was allowed to recover a lease which should have been produced by the creditor as the voucher of his debt. In *Hain*, 13th Dec. 1853, a diligence was granted for recovery of writs in a third party's hands, to show that that third party held a security for one of the claimants which was not valued nor deducted. The invariable course is for the party craving the diligence to give in a specification, in the first place, of the documents called for, as the diligence must be for recovery of specific documents to prove specific objections (*Foulds*, 12th July 1851). In this case a diligence was refused, as being too sweeping. As to evidence in a ranking, *vide* Act 1856, s. 123, note *b*, *postea*.

EVIDENCE OF CREDITORS' QUALIFICATIONS.

Diligence for specific documents.

300. The presenting of or concurring in a petition for sequestration, or the lodging a claim, bars the effect of any Statute of Limitations in Her Majesty's dominions, and although the sequestration should be recalled, such interruption is effectual. (Ibid., s. 109, *postea*.)

Interruption of prescription.

(5.) *Mode of Computing Majorities of Creditors.*

COMPUTATION OF MAJORITIES.

301. Questions at meetings of creditors are generally determined by the majority in value. (Ibid., s. 101, and notes, *postea*.)

Majority in value.

302. In computing a majority in value, all creditors are included, no matter what be the amount of their debts. (Ibid., s. 101.)

All creditors included.

303. But creditors whose debts are under £20 are not reckoned in number. (Ibid., s. 101.)

Computation of number.

304. In cases of carrying through a composition, where the bankrupt requires such a majority as nine-tenths in number, and where there may be only eight or nine creditors altogether, and, consequently, where it is impossible to have the statutory

Where numbers are fractional.

COMPUTATION OF MAJORITIES.

majority unless the creditors were unanimous, it is only necessary, in each of these two cases, that the bankrupt get the concurrence of the whole number excepting one; but it is decided that a majority of two out of three will not suffice. (Act 1856, s. 145, note *b*, *postea*.)

(6.) *Requisites to the Constitution of Meetings generally.*

CONSTITUTION OF MEETINGS GENERALLY.

Calling of meetings.

305. The trustee, or any commissioner with notice to the trustee, may at any time call a meeting of the creditors, and the trustee must call such meeting when required by one-fourth in value of the creditors ranked on the estate, or by the accountant (ibid., s. 98). Although only one qualified creditor attend, it is enough (*Cookson*, 11th Dec. 1863).

Gazette notice.

306. Notice of the day, hour, place, and purpose of all meetings of creditors under the Act, must be advertised in the 'Edinburgh Gazette' seven days at least before the day of the meeting, and such meeting may be adjourned to the following day. (Act 1856, s. 99, and notes.)

Special notification to creditors.

307. It is not necessary to send notification of meetings to any creditor whose debt shall be under £20, unless such creditor shall have given directions in writing that such notification shall be sent. (Ibid., s. 100.)

CONSTITUTION OF SPECIAL MEETINGS.

Meeting for election of trustee.

Court appoints it.

Gazette notices.

Procedure at meeting.

308. The requisites for the proper constitution of the meeting for election of trustee and commissioners are as follows: 1. The Court, by the deliverance awarding sequestration, appoints the meeting (ibid., s. 67; Act 1860, s. 5, *postea*). 2. The party obtaining sequestration, within four days from its date if awarded in the Court of Session, or if it is awarded by the Sheriff, within four days after a copy of the said deliverance could be received in course of post in Edinburgh, inserts notices in the 'Edinburgh Gazette,' and within six days in the 'London Gazette' (Act 1856, s. 48). 3. The creditors or their mandatories, duly qualified, assemble at the time and place fixed for the election of trustee; and if two or more creditors shall give notice to the Sheriff of the county, such Sheriff attends and presides; and the Sheriff Clerk also attends, and marks the oaths and productions, and retains them, and writes the minutes, which the Sheriff signs; and when the Sheriff is not present the creditors elect a preses and a clerk to perform these duties (ibid., s. 68).

Constitution of special meetings.

309. The requisites for the proper constitution of the meeting to be held after the examination of the bankrupt are as follows—viz., On the Sheriff granting a warrant for the public examination of the bankrupt, the trustee, 1. Publishes a statutory advertisement in the 'Edinburgh Gazette;' and, 2. Sends special notice to the creditors, intimating a second meeting: but when the bankrupt is dead, and, consequently, there can be no such examination, then the meeting is held not later than fourteen days after the date of the advertisement. (Act 1856, s. 87.)

Second meeting. Gazette notice. Special notices. Where bankrupt dead.

Meeting for winding up estate.

310. The requisites for the proper constitution of the meeting for winding up the estate are as follows—viz., If, on the lapse of twelve months from the date of the sequestration, it shall appear to the trustee and commissioners expedient to sell the estate not disposed of, they fix a day for holding a meeting of the creditors to take the same into consideration; and the meeting must be intimated by advertisement, and notices sent. (Ibid., s. 136, and notes, *postea*.)

Meeting for receiving offer of composition.

311. It is requisite, in order to call a special meeting for receiving and entertaining an offer of composition, that the meeting be one called by the trustee, with the consent of the commissioners (ibid., s. 139), and, of course, in terms of Act 1856, s. 99.

Meeting where offer fallen.

312. It is requisite, in order to the trustee calling a meeting of creditors to accept an offer of composition, where a previous offer has been made and rejected, or has become ineffectual, that nine-tenths in number and value of all the creditors ranked, or entitled to be ranked, on the estate, shall assent in writing to such offer, which offer must state the amount of composition and the terms of payment, and be subscribed by the cautioner proposed. (Ibid., s. 145.)

Meeting for accepting offer. Where made at first meeting.

Where made at second meeting.

313. It is requisite, antecedent to the meeting for accepting an offer of composition—1. In the case of the offer having been entertained at the meeting for election of trustee, that the trustee shall forthwith advertise in the 'Edinburgh Gazette,' and transmit by post letters to each of the creditors claiming on the estate or mentioned in the bankrupt's state of affairs, notifying that the meeting for examination of the bankrupt will decide on the offer, and with the requisite information to enable the creditors to judge of such offer; and, 2. In the case of the offer having been made and entertained at any

CONSTITUTION OF SPECIAL MEETINGS.

other meeting, that the trustee shall call another meeting, and shall send by post letters addressed to each of the creditors who have claimed on the estate or are mentioned in the bankrupt's state of affairs, and with information as above. (Act 1856, s. 137 and 139.)

Meeting for trustee's discharge.

314. It is requisite, antecedent to the meeting with a view to the trustee's discharge, that after a final division of the funds, the trustee shall call the meeting by advertisement, and by letters addressed by post to every creditor who has produced an oath, to consider as to an application for his discharge. (Ibid., s. 152.)

(7.) *Rights of Creditors in Estate.*

RIGHTS OF CREDITORS IN ESTATE.

315. The estates, present and future, of the bankrupt, are declared by the Court, in awarding sequestration, to belong to the creditors. (Ibid., s. 29 and 30.)

Declarator of Court.

Personal right.

316. This right so conferred on the creditors is a mere personal right, and does not vest in them any direct power over the estates. (Ibid.)

Valid in question with bankrupt.

317. It is, however, as a declarator of right, valid and sufficient in a question with the bankrupt and his successor (ibid., s. 29 and 30); for, in the *first* place, the bankrupt is incapacitated from further interference with his estate, as it is enacted that all acts done or deeds granted by the bankrupt, after the date of the sequestration and before his discharge, out of or in relation to the estate (unless with the consent of the trustee), shall, in the event of sequestration being awarded, be null and void; and, in the *second* place, where the debtor is dead, the Court ordains any successor who has made up a title to or is in possession of any part of his property, to convey the same to the trustee. (Ibid., s. 29.)

Creditors generally are preferred to particular creditors.

Sequestration equivalent to adjudication.

Also to arrestment and poinding.

318. And in competition, or running a race of diligence with particular creditors, the right so acquired by the general creditors is sufficient to give them a preference; for the Statute provides—1. That the sequestration shall be equivalent to a decree of adjudication of the heritable estate; and when it is dated within year and day of any effectual adjudication, the estate falls to be disposed of under the sequestration (ibid., s. 107); and, 2. That the sequestration shall be equivalent to an arrestment in execution and decree of forthcoming, and to

an executed or completed poinding; and no arrestment or poinding, executed on or after the sixtieth day prior to the sequestration, is effectual (Act 1856, s. 108). Rights of creditors in estate.

319. But in competition with other heritable creditors, it is necessary for the creditors to have recorded in the Register of Inhibitions an abbreviate of the sequestration, which has the effect of an inhibition, and of a citation in an adjudication. (Ibid., s. 48.) Competition with disponees, &c.

320. It is not, however, until the trustee's investiture is completed in terms of law, that the rights of third parties are completely excluded. (Ibid., s. 102; *vide* Trustee's Rights, *postea*.) Completion of trustee's right.

321. The rights of property acquired by the trustee are all for behoof of the creditors. (Ibid., s. 102, 103, 105, and 106.) Trustee's right for behoof of creditors.

322. Lastly, the whole estate, when reduced into money, after paying all necessary charges and a commission to the trustee, is to be divided among those who were creditors of the bankrupt at the date of the sequestration, ranked according to their several rights and interests (ibid., s. 121). In regard to Ranking, it is necessary to observe three cases of not uncommon occurrence; the case of creditors claiming a preference—that of creditors who claim on various estates—and the case where there are two creditors for the same debt. Estate to be divided among creditors. Ranking.

1. Preferable Creditors.—First, the preference may be over the general estate, such as for rent, wages, or the like, and falls to be ranked in full in the order of preference established by law (*vide* ibid., s. 126, note *g*). Second, the preference may be to a particular fund or estate, and it may be heritable or moveable. But, lastly, it may be that the creditor, after making allowance for his preference, has still an unsecured debt to rank for on the general estate. In that case he must value and deduct his security, and can only rank as an ordinary creditor for the balance (ibid., s. 65). 2. Creditors over Various Estates.—First, where there are several obligants, whether full debtors or sureties, the creditor may rank on *each* of their estates without any valuation of his claim against others, except in the case of a creditor being ranked on the estate of a partner of a company, when he suffers a deduction of the value of his claim on the company estate (ibid., s. 66). Second, neither does the creditor require to deduct payments made *after* bankruptcy, whether by co-obli- Preferable creditors.

RIGHTS OF CREDITORS IN ESTATE.

gants or cautioners (Act 1856, s. 65, note *e*). But, lastly, it must be observed that in no case can he rank for his full debt on different estates so as to get more than twenty shillings in the pound. 3. TWO CREDITORS IN THE SAME DEBT.—First, there may be a cautioner and the principal creditor, and both cannot be ranked on the debtor's estate, as the law permits no double ranking for the same debt. But, secondly, while there can be no double ranking in this way on the general fund, it will not affect a cautioner's lien over a *particular* fund, that the principal creditor has been ranked on the general estate (ibid., s. 49, note *c*). As to rules for voting, *vide* par. 275, *antea*.

(8). *Powers of Individual Creditors.*

POWERS OF INDIVIDUAL CREDITORS.

323. Creditors have the power to apply, or to concur in, an application for sequestration of their debtor's estates (Act 1856, s. 13), provided that the debt is not less than £50 in the case of their being only one creditor, and not less than £70 where there are two, and not less than £100 where there are more creditors, whether their debts are liquid or illiquid, but they must not be contingent (ibid., s. 14.)

To apply for sequestration.

To apply for appointment of judicial factor.

324. A creditor may apply to the Court to take immediate measures for the preservation of the estate. (Ibid., s. 16.)

To apply to have premises secured.

325. Any creditor may apply to the Sheriff, and show cause, at any time after the sequestration, before the election of a trustee, why the Sheriff should cause to be sealed up the bankrupt's books and papers, and have his premises secured. (Ibid., s. 17.)

To appeal against sequestration.

326. A creditor may appeal against a sequestration, in order to get it remitted to a particular Sheriff, and may apply for sequestration to the Court of Session if the Sheriff has refused sequestration. (Ibid., s. 19.)

Proceedings after appeal.

327. No proceedings of creditors, in pursuance of orders given by any Sheriff before whom the sequestration does not come to depend, are of any force or effect from and after the date of an appeal in any one of two or more sequestrations awarded against the same debtor, or of sequestration by the Court of Session, unless they be such measures as may be necessary for preserving the debtor's estate and effects within such Sheriff's jurisdiction. (Ibid., s. 20.)

328. No creditor, after the first deliverance on the petition

for sequestration of the estates of a deceased creditor, can be confirmed executor-creditor, or to raise or insist in any adjudication against the estate. (Act 1856, s. 30.)

Powers of individual creditors.

329. Any creditor may apply for recall within forty days, but he cannot appeal against the deliverance awarding sequestration. (Ibid., s. 31.)

Cannot be confirmed executor-creditor.

330. Creditors may be sisted in place of others in sequestration proceedings. (Ibid., s. 34.)

Power of sisting.

331. It is only the incarcerating creditor who can be heard against the bankrupt's application for liberation (ibid., s. 45), or who can appeal against the deliverance granting liberation (ibid., s. 46.)

Incarcerating creditor to be heard as to liberation.

332. No creditor can incarcerate or detain in prison the bankrupt, after protection or liberation, unless upon a warrant *in meditatione fugæ* or *ad factum præstandum*. (Ibid., s. 47.)

Cannot incarcerate debtor after protection.

333. Where a creditor has in his oath, with a view to voting, put a value on a security or obligation, he may, at any time before he has been required to assign the same to the trustee, correct such valuation. (Ibid., s. 62.)

Correction of valuation.

334. A creditor may vote through a mandatory. (Ibid., s. 63.)

Vote by mandatory.

335. Certain creditors cannot vote in the election of trustee or commissioners—viz., 1. Any person who shall acquire the debt after the date of the sequestration otherwise than by succession or marriage; 2. The wife of the bankrupt; or, 3. Any trustee for her. (Ibid., s. 64.)

Creditors who cannot vote for trustee, &c.

336. Any two or more creditors may give notice to the Sheriff of the county, and such Sheriff must attend all meetings for the election of trustee, and preside; and the Sheriff Clerk or his Depute must also attend. (Ibid., s. 68 and 74.)

Attendance of Sheriff, &c.

337. Any creditor may object to a candidate for the office of trustee (s. 69 and 70); but the decision of the Sheriff is final. (Ibid., s. 71).

Object to election of trustee.

338. One-fourth of the creditors in value may at any time apply to the Lord Ordinary for removal of the trustee, on a sufficient reason being shown. (Ibid., s. 74.)

Certain creditors may remove trustee.

339. When the trustee dies, resigns, or is removed, or remains at any one time for three months furth of Scotland, a creditor may apply to the Sheriff for an order to hold a meeting to devolve the estate on the trustee next in succession, or elect a new trustee. (Ibid., s. 74.)

If trustee dies, &c., a creditor may apply to Sheriff.

POWERS OF INDIVIDUAL CREDITORS.

340. Where trustee improperly retains in his own hands the funds of the estate, any creditor may petition the Lord Ordinary or Sheriff for his dismissal. (Act 1856, s. 83.)

Dismissal of trustee.

Trustee's accounts.

341. Creditors or their agents are entitled to see the sederunt-book and trustee's accounts at all times, but not documents of a confidential nature. (Ibid., s. 84.)

Calling trustee, &c., to account.

342. A creditor may call the judicial factor, the trustee, and commissioners to account for their intromissions and management. (Ibid., s. 86.)

Interrogation of bankrupt.

343. A creditor, with the sanction of the Sheriff, may interrogate the bankrupt while under his public examination. (Ibid., s. 93.)

Creditor under £20.

344. A creditor whose debt is under £20 does not count as a creditor in number in questions of voting. (Ibid., s. 101.)

Purchase of estate.

345. A creditor may purchase any estate which is sold publicly by virtue of the Statute. (Ibid., s. 120.)

Appeal trustee's decisions.

346. Any creditor who is dissatisfied with the decision of the trustee upon any claim may appeal to the Lord Ordinary or Sheriff. (Ibid., s. 127 and 130.)

New claim.

347. If a creditor's claim has been rejected by the trustee, he is entitled to lodge a new claim with a view to future dividends. (Ibid., s. 127.)

Dividends.

348. The creditors are entitled to the dividends allotted to them respectively in the scheme of division. (Ibid., s. 129 and 131.)

Offer of composition.

349. Any creditor may object before the Lord Ordinary or Sheriff to an offer of composition. (Ibid., s. 138, 139, and 145.)

Oath by bankrupt.

350. Any creditor may require that the party offering a composition, or that the bankrupt applying for discharge without composition, shall make an oath or affirmation, instead of a declaration that he has made a full and fair surrender, &c. (Ibid., s. 140 and 147.)

Appeal against deliverance by commissioners.

351. Any creditor may bring under the review of the Lord Ordinary or Sheriff the deliverance of the commissioners auditing the accounts of the trustee, and ascertaining the balance due to by him, and fixing the remuneration for his trouble. (Ibid., s. 141.)

When debt not objected to, entitled to composition.

352. Any creditor is entitled to his composition where his debt has been given up by the bankrupt in the state of his affairs as due by him, or which has been admitted without

question to be reckoned in the acceptance of the offer of composition. (Act 1856, s. 143.) POWERS OF INDIVIDUAL CREDITORS.

353. Where the creditor has not produced an oath before the date of the deliverance, approving of the composition, he cannot make any demand against the cautioner after the space of two years from said date, reserving to him, however, his claim against the bankrupt and his estate. (Ibid., s. 144.) Recourse against cautioner for composition.

354. A creditor may appear before the Lord Ordinary or Sheriff, and oppose the bankrupt's discharge without composition. (Ibid., s. 146.) Opposition to bankrupt's discharge.

355. No creditor can acquire any preferences, gratuities, securities, payments, or other consideration not sanctioned by the Statute, nor enter into any secret or collusive agreements or transactions for concurring in facilitating or obtaining the bankrupt's discharge either on or without an offer of composition, and whether the offer be accepted or not, or the discharge granted or not. (Ibid., s. 150.) Preferences to concur in bankrupt's discharge illegal.

356. If, during the sequestration, any such preferences, &c., have been obtained, or secret or collusive agreements or transactions been entered into, any creditor ranked on the estate may bring the matter into court by means of a petition; and if the sequestration has been closed, any creditor who has not received full payment of his debt may raise a multiplepoinding. (Ibid., s. 150.) Remedy by petition, &c.

357. Any creditor may apply by petition to the Lord Ordinary to have the bankrupt's discharge annulled, where the latter shall have been personally concerned in or cognisant of the granting or promising any preference, &c., or in any secret or collusive transaction, with a view to his discharge. (Ibid., s. 151.) Bankrupt's discharge may be annulled.

358. Any creditor whose dividend is consigned in bank may apply to the Lord Ordinary for authority to receive the same, but he is not entitled to interest. (Ibid., s. 153.) Consigned dividends.

359. Any creditor may sue for removal of the trustee if he shall fail to make the annual return provided for by Act 1856, s. 158. Annual return by trustee.

360. Any creditor may apply to the accountant to take steps in regard to the management or winding-up of the estate. (Ibid., s. 160.) Apply to accountant.

361. Any creditor may appeal to the Lord Ordinary or Sheriff against the resolutions of creditors at meetings, and Appeal against resolutions of creditors.

POWERS OF INDIVIDUAL CREDITORS.

also against any deliverance of the trustee or commissioners (Act 1856, s. 169.)

May appeal to Court of Session.

362. Such creditor may also bring any deliverance of the Sheriff under the review of the Inner House of the Court of Session, or before the Lord Ordinary in time of vacation, except where the same is declared not to be subject to review. (Ibid., s. 170.)

May appeal against Lord Ordinary's decision.

363. Such creditor may also bring any judgment of the Lord Ordinary under the review of the Inner House. (Ibid., s. 171.)

House of Lords.

364. And also any deliverance of the Inner House under the review of the House of Lords. (Ibid., s. 173.)

Voting.

365. Generally a creditor is entitled to a vote in all questions at meetings of creditors. (Ibid., s. 49 and 101.)

Appeal against merits of resolutions.

366. And where he is in the minority he is entitled to bring the merits of the resolution of the majority under the consideration of the Court. (Ibid., s. 169, note *m*, *postea*.)

(9.) *Powers of Majorities of Concurring Creditors.*

POWERS OF MAJORITIES OF CONCURRING CREDITORS.

367. Nine-tenths in number and value of the creditors ranked on the estate may at any time apply for recall of the sequestration. (Ibid., s. 32.)

Recall of sequestration. Deed of arrangement.

368. Where the estate is in the course of being wound up by a deed of arrangement, it is sufficient that the deed be subscribed by or by authority of four-fifths in number and value of the creditors of the bankrupt, and such deed is as binding on the creditors as if they had all acceded thereto. (Ibid., s. 38.)

Renewed offer of composition.

369. Where an offer of composition has been made and rejected, or become ineffectual, no other offer of composition can be entertained unless nine-tenths in number and value of all the creditors ranked or entitled to be ranked on the estate shall assent in writing to such offer. (Ibid., s. 145.)

Bankrupt's discharge without composition.

370. Where the bankrupt applies for his discharge at any time after the meeting held after his examination, he requires the concurrence of every creditor who has produced his oath in terms of the Statute; and if he presents the petition on the expiration of six months, he requires a majority in number and four-fifths in value; and if he presents the petition on the expiration of twelve months, he requires a majority in number and two-thirds in value; and where he presents the

petition on the expiration of eighteen months, he requires a majority in number and value. (Act 1856, s. 146.) POWERS OF MAJORITIES OF CONCURRING CREDITORS.

(10.) *Powers of Majorities of Creditors at Meetings.*

371. At the meeting for the election of the trustee, or at any subsequent meeting to be called for the purpose, a majority in number and four-fifths in value, may resolve that the estate be wound up under a deed of arrangement, &c. (Ibid., s. 35.) POWERS OF CREDITORS AT MEETINGS. Deed of arrangement.

372. At the meeting for election of trustee, or at any subsequent meeting, a majority in value may resolve that personal protection ought to be granted to the bankrupt. (Ibid., s. 44 and 101.) Personal protection.

373. At any meeting a majority in value may require from any creditor an assignation in favour of the trustee of any security, obligation, or claim, on payment of the specified value which he has put upon it, with 20 per cent in addition. (Ibid., s. 62 and 101.) Assignation of a creditor's securities.

374. At the meeting for election of trustee, a majority in value shall then and there elect a fit person to be trustee, &c. (Ibid., s. 68 and 101.) Election of trustee.

375. A majority in value shall also fix the sum for which the trustee shall find security, and decide on the caution offered. (Ibid., s. 72 and 101.) Trustee's security.

376. At any meeting called for the purpose, a majority in number and value may remove the trustee or accept of his resignation. (Ibid., s. 74.) Removal of trustee, &c.

377. At any meeting called by warrant of the Sheriff for the purpose, a majority in value may devolve the estate on the trustee next in succession, or elect a new trustee. (Ibid., s. 74 and 101.) Election of new trustee, &c.

378. At the meeting for election of trustee, a majority in value shall elect three commissioners. (Ibid., s. 75 and 101.) Election of commissioners.

379. At any meeting called for the purpose, a majority in value may remove a commissioner and elect another. (Ibid., s. 76 and 101.) Their removal.

380. At the two first statutory meetings, or at any meeting called for the purpose, a majority in number and value may resolve that the personal protection of the bankrupt ought to be renewed. (Ibid., s. 77.) Renewal of personal protection.

Powers of creditors at meetings.

Allowance to bankrupt.

381. And at such meetings four-fifths in value of the creditors may authorise an allowance out of the estate to be made to the bankrupt; but such allowance shall not exceed £3, 3s. per week to the bankrupt, or to each partner of a company. (Act 1856, s. 78.)

Directions to trustee.

382. At any meeting a majority in value may give directions to the trustee as to the management, realisation, and recovery of the estate. (Ibid, s. 82, 96, and 101.)

Sale of heritable estate.

383. At any meeting a majority in value, where any part of the estate consists of land or other heritable property, may determine whether the trustee is to bring such property to judicial sale, or to dispose thereof by public voluntary sale, or by private sale. (Ibid., s. 96 and 101.)

Proceedings against bankrupt.

384. If it appear to a majority in number and value of the creditors, at any meeting after the examination of the bankrupt, that he has not made a full and fair surrender of his estate, &c., they may authorise the trustee to proceed against him in terms of law at the expense of the estate. (Ibid., s. 97.)

Questions determined by majority in value.

385. At any meeting of creditors all questions are to be determined by the majority in value, unless in the cases otherwise provided for. (Ibid., s. 101.)

Acceleration of dividends.

386. The creditors may direct the trustee to apply to the Court for authority to accelerate the dividends: and after the second dividend is made, the creditors may determine that future dividends shall be made at shorter intervals. (Ibid., s. 133, 101.)

Winding-up of estate.

387. At a meeting called for the purpose, three-fourths in value of the creditors may decide in favour of selling by auction the estates not disposed of, and any interest which the creditors have in the outstanding debts and consigned dividends. (Ibid., s. 136.)

Offer of composition at first meeting.

388. At the meeting for election of trustee, a majority in number and nine-tenths in value of the creditors may entertain for consideration an offer of composition with security. (Ibid., s. 137.)

Acceptance.

389. At the meeting held after the examination of the bankrupt, a majority in number and nine-tenths in value of the creditors may accept the same. (Ibid., s. 138.)

Offer at subsequent meetings.

390. At the meeting held after the examination of the bankrupt, or at any subsequent meeting called for the purpose by the trustee, with the consent of the commissioners, a majority

in number and four-fifths in value of the creditors may entertain an offer with security; and at a subsequent meeting to be called for the purpose, a like majority may accept the same. Act 1856, s. 139.)

Powers of creditors at meetings.

391. At a special meeting duly called for finally disposing of a second offer of composition, where a former offer had been made and rejected, or had become ineffectual, a majority in number and nine-tenths in value of the creditors may accept the same. (Ibid., s. 145.)

Meeting for disposing of a renewed offer.

392. At a meeting called for the purpose, after the election of trustee, a majority in number and value of the creditors may resolve that the bankrupt shall only be entitled to apply for and obtain a decree of cessio, and shall have no right to a discharge in the sequestration. (Ibid., s. 168.)

Cessio.

393. At a meeting called for the purpose, a majority in value of the creditors may authorise a prosecution at the instance of the trustee against any person who shall be guilty of wilful falsehood in any oath made in pursuance of the Statute. (Ibid., s. 178.)

Prosecution against bankrupt.

(11.) *Liabilities of Creditors.*

Liabilities of creditors.

394. In regard to the general liability of the creditors for the obligations of the trustee, a distinction falls to be made between those incurred by him where he is acting according to the Statute, and those incurred where he has gone beyond it. In the former case, he binds the estate; in the latter case, he binds those creditors who authorise him, *singuli in solidum*. In *Kirkland*, 9th March 1838, the following was laid down as law under 54 Geo. III. c. 137, and it is quite applicable under the present Statute: "Some time must necessarily elapse "before the whole estate is converted into money, longer "or shorter according to the circumstances of the case, and "during that interval it may be necessary for the trustee to "proceed to a certain extent in carrying on the contracts "of the bankrupt; thus, if the bankrupt is the tenant of an "agricultural subject, the land may be tilled and sown by the "trustee, and the crop reaped. If he has a lease of mines, the "workings may be continued; or if he is a manufacturer, "the machinery may be kept going for the purpose of pre-"venting loss to all concerned. These operations fall within

If trustee acts within Statute, he binds the estate. If not, he binds those who authorise him.

LIABILITIES OF CREDITORS.

" his powers by the Statute, and they infer no obligations on " the creditors personally, but only against the estate itself for " the benefit of which they are continued. If the trustee, " instead of acting within the injunctions of the Statute, shall, " in virtue of the instructions of the creditors, carry on any " undertaking of the bankrupt as a speculation for their behoof " either because they conceive that it will turn out a profit- " able concern, or that at a more distant period it may be " disposed of to greater advantage, the parties to whom the " bankrupt is bound, in reference to that undertaking, are " entitled to consider the creditors as adopting his contracts " and assuming his liabilities. In that case, although the " trustee, in his capacity of manager may not himself be bound " beyond the value of the estate, the creditors who have come " into the bankrupt's place are bound, we conceive, to the " same extent that the bankrupt would have been bound. As " that is a case in which the trustee is not acting within his " competence as such, and is not executing the powers con- " ferred on him by the Statute, he will not bind all the credi- " tors personally, but those alone by whose authority, express " or implied, he has acted. What shall be held as implied " authority must depend on the circumstances of the case." (*Vide* Act 1856, s. 57, note *b*, *postea*.)

Expenses of sequestration.

395. In regard to the expenses of the sequestration, no person, by merely lodging an oath and claim, or being ranked or receiving payment of a dividend, or appearing or voting at a meeting in a sequestration as a creditor, is liable for them. (Act 1856, s. 57.)

SECT. 3.—PREFERABLE CREDITORS.

(1.) *Creditors holding Preferences over General Estate.*

PREFERABLE CREDITORS.

Privileged debts.

Not bound to value and deduct.

396. 1. Those creditors whose debts are privileged by our law —such as domestic servants for their wages, or physicians for deathbed fees—and are entitled to a preference over ordinary creditors, must lodge their claims in the usual way (ibid., s. 49, 121, and 126). 2. But though these creditors have such preference, they are not bound, in voting and ranking, to value them as securities (ibid., s. 4, 59, and 65 ; *Low*, 10th July 1851.)

(2.) *Rights of Preferable Creditors in Estate generally.*

PREFERABLE CREDITORS.

May petition for sequestration, &c.

397. They have sufficient interest in the estate generally to entitle them to petition, or concur in a petition, for sequestration (Act 1856, s. 14); but they fall, in their oath, to specify the security which they hold for the debt (ibid., s. 22).

Power of voting.

398. They have no right, however, to vote on questions affecting the general estate, except to the extent to which their debt is not covered by the security. To enable them to do so, they fall to value the security, and deduct the value thereof, or of the proceeds if they have realised the security, from their debt, and vote for the balance (ibid., s. 59). In doing so they run the risk of being called on to assign the security, on payment of the value they have put upon it, with 20 per centum in addition; but, before being so called on to assign, they may correct the oath and valuation (ibid., s. 62).

Right of ranking.

399. Neither can they rank for a dividend on the general estate, except for any balance of their debt that may remain after deducting the value of the security. (Ibid., s. 65.)

Right to composition.

400. If the estate is wound up by composition contract, however, they will be entitled to a composition on their whole debt without such deduction. (Ibid., s. 137, note *d*, *postea*.)

(3.) *Rights of Heritable Creditor in Subject of Security.*

Heritable creditor not affected by sequestration.

401. The sequestration does not affect the security of a heritable creditor, as the clauses vesting the estate in the trustee do so "subject always to such preferable securities as existed "at the date of the sequestration, and are not null and re- "ducible." (Ibid., s. 102.)

His right of voting.

402. The heritable creditor is, in questions as to the disposal or management of the estate subject to his security, entitled to vote as a creditor for the full amount of his debt without making any deduction. (Ibid., s. 59.)

Heritable creditor may sell.

403. A creditor holding a security over the heritable estate of the bankrupt, preferable to the right of the trustee, with a power to sell, may sell, in terms of his security, notwithstanding the sequestration; and it is competent to the trustee to concur therein, in order to fortify the title. (Ibid., s. 112.)

Posterior heritable

404. Any posterior heritable creditor preferable to the trus-

PREFERABLE CREDITORS.

tee may, by petition to the Lord Ordinary or to the Sheriff, compel the said creditor and the purchaser to account for any reversion of the price. (Act 1856, s. 112.)

creditor may call creditor who sells to account.

405. The heritable creditor may concur in a public sale by trustee of the estate, subject to his security. (Ibid., s. 113.)

Heritable creditor may concur in sale by trustee.

Sale of heritable estate by trustee.

406. If the creditors, at the meeting held after the examination of the bankrupt, or at any other meeting called for the purpose, resolve that the trustee shall dispose of the heritable estate by public sale, or bring it to judicial sale, and if such resolution has been made before a heritable creditor having a power of sale shall have commenced proceedings for sale, or if such proceedings, after being commenced prior to the date of such resolution, have thereafter been unduly delayed, such creditor is not entitled to interfere with the sale by the trustee. (Ibid., s. 114.)

Heritable creditor may concur in sale by private bargain.

407. The heritable creditor may concur in a sale by private bargain of the estate, subject to his security. (Ibid., s. 115.)

He may apply for interim warrant.

408. He may apply to the Lord Ordinary or the Court for an interim warrant for payment of preferable claims, &c. (Ibid,, s. 117.)

Poinding of the ground.

Mails and duties.

409. By the old law, a heritable creditor who had executed a summons of poinding of the ground or of mails and duties prior to the trustee's confirmation, was preferred to the moveables and rents respectively. But this was limited by 2 & 3 Vict. c. 41, and Act 1856, s. 118, to three half-yearly terms. This limitation is now removed by the "Conveyancing Act, 1874," s. 55, which repeals it, and provides that all heritable creditors who have been in possession under their securities, and whose right to the rents collected by them has not been challenged by action previous to the commencement of the Act, shall be entitled to retain and apply all rents collected by them in the same manner as they might have done if the provisions of the repealed section had not been enacted.

410. A heritable creditor may purchase any estate when sold publicly. (Ibid., s. 120.)

(4.) *Rights of Adjudger in Subject of Security.*

ADJUDGER.

Adjudger in competition with trustee.

411. When the sequestration is dated within year and day of any effectual adjudication, then the estate comprehended under it falls to be disposed of under the sequestration (Act

1856, s. 107); but where the adjudication is prior to that period, then it remains valid to the creditor as a preferable security (ibid., s. 102), which the trustee cannot disturb, but which does not prevent him from realising said estate by sale, subject to the adjudger's preference. ADJUDGER.

(5.) *Rights of Inhibiter in Subject of Security.*

412. As the trustee is vested in the whole heritable estate, and his right is declared not to be challengeable on the ground of any prior inhibition, saving the effect of such inhibition in the ranking (ibid., s. 102); and as the trustee has the power of disposing of the estate without being affected in any way by inhibitions (ibid., s. 105), it follows that an inhibiting creditor must lodge an oath, and claim his preference in the ordinary way. Having done so, he is entitled to be preferred to the proceeds of the subjects over creditors whose debts were incurred after publication of his inhibition (*Ewing*, 29th June 1860). The clear and equitable rule of ranking is, "That the "inhibiter's preference must be secured to him entirely at the "expense of the subsequent creditors; while creditors whose "debts were contracted prior to the inhibition, draw just what "they would have done had the whole creditors been ranked "*pari passu*" (per Lord President Inglis in *Baird and Brown*, 26th Jan. 1872.) In that case the judgment of the Court was as follows: "Find that the order of ranking of the creditors "on the proceeds of the heritable estate is to be ascertained as "follows: First, the whole creditors are to be ranked *pari* "*passu* as adjudging creditors on the said proceeds, and the "dividend thereby arising is to be held the dividend payable "to those creditors whose debts were contracted anterior to "the use of the inhibition. Secondly, for the purpose of ascer- "taining the dividend payable to the inhibiting creditors, the "said anterior creditors and the inhibiting creditors shall be "ranked *pari passu* on the said proceeds as if no debts had "been contracted subsequently to the use of the inhibition, "and the inhibiting creditors shall draw back from the poste- "rior creditors the difference between the dividend arising on "the first *pari passu* ranking and that arising on this second "ranking; and the said differences, added to the dividend "arising on the said *pari passu* ranking, shall be held the divi- INHIBITER. Effect of an inhibition.

INHIBITER. "dend payable to the said inhibiting creditors. Thirdly, the "dividend on the said *pari passu* ranking, less the amount so "drawn back by the inhibiting creditors, shall be held the "dividend payable to the posterior creditors. Find that all "the creditors are entitled to be ranked *pari passu* on the "proceeds of the moveable estate, each of the said creditors "valuing and deducting the value of any security held over "any part of the bankrupt estate, in terms of law."

(6.) *Rights of Creditors of Bankrupt's Ancestor in Subject of Security.*

ANCESTOR'S CREDITORS.

Creditors of bankrupt's ancestor have a preference for three years.

413. Where the bankrupt has succeeded to heritable estates from an ancestor whose debts are unpaid, these creditors are entitled to a preference over such estates, provided they have done complete diligence to attach the estates within three years from the ancestor's death; and it is declared by the Statute, that the sequestration of the heir's estates amounts to complete diligence for that purpose in favour of the ancestor's creditors. (Act 1856, s. 102.)

But estate falls to be managed under sequestration.

414. These estates, however, fall to be disposed of under the sequestration, and the creditors must duly lodge their oaths and claim the preference. (*M'Lachlan*, 15th June 1826, aff. 5th June 1829; 3 W. and S. 449.)

(7.) *Rights of Landlord in Subject of Security.*

LANDLORD AND ARRESTER.

Landlord's rights not affected by sequestration.

415. As nothing in the Statute affects the landlord's hypothec (Act 1856, s. 119), he is entitled, notwithstanding the bankruptcy, to proceed with his process of sequestration and sale until he is paid or secured.

(8.) *Rights of Arrester in Subject of Security.*

RIGHTS OF ARRESTER.

Arrester, prior to sixtieth day, preferable.

416. In the case of a fund being under arrestment executed prior to the sixtieth day before the sequestration, the arresting creditor falls to claim his preference in the ranking, but meantime the trustee takes possession of the arrested fund. (*Lindsay*, 10th July 1840; *Gordon*, 12th Jan. 1842; *Brown*, 1st Feb. 1849; *vide* Act 1856, s. 102.)

(9.) *Rights of Poinder in Subject of Security.*

417. The same principle would seem to apply in the case of a poinding executed prior to the sixtieth day before the sequestration (*Lindsay, &c., supra*, but *vide* Act 1856, s. 102 and 108), though the point has not been determined.

RIGHTS OF POINDER.

Also a poinder.

(10.) *Rights of Law Agent in Subject of Security.*

418. The bankrupt's law agent, who may have a right of lien over such title-deeds or papers as are placed in his hands in the course of business, and in connection with which an account has been incurred to him, is bound to part with them to the trustee, "reserving the effect of his hypothec" (*Johnston*, 23d Jan. 1823). Even the law agent of the first trustee is bound to deliver up the documents in his possession to a subsequent trustee, reserving his hypothec "as a preferable "claim against the estate" (*Paul*, 2d Feb. 1826). Having called for the titles in one case, the trustee was held bound to pay the agent "primarily and preferably out of any sums "realised from the heritable estates to which the titles relate" (*Renny*, 1st July 1841). And it is not competent for the trustee to call for documents, and thereafter return them, but he must give effect to the hypothec in the ranking (*Renny*, 8th Feb. 1847). Observed that the law agent's preference is over the whole fund (*Skinner*, 2d June 1865).

RIGHTS OF LAW AGENT.

Law agent gives up papers to trustee, reserving lien.

(11.) *Rights of Holder of Lien generally in Subject of Security.*

419. In the case of a creditor holding a lien over any moveable subject, accompanied with possession, the Statute does not in any way disturb him in the enjoyment and privileges of his security; and consequently he may retain or realise the subject of his lien after sequestration as before it (*Broughton*, 17th Dec. 1814, F. C.); but the trustee, in addition to all the bankrupt's rights, may exercise the right of demanding an inspection of the goods prior to a sale at the instance of the creditor, and in one case he obtained an interdict against a sale until he had inspected them (*Ross*, 23d Dec. 1826).

HOLDER OF LIEN.

Holder of lien retains security.

Sect. 4.—Trustee.

(1.) *Election and Confirmation.*

Election of trustee.

420. If the estate is to be wound up by deed of arrangement, it is not necessary to elect a trustee. (Act 1856, s. 35.)

Where deed of arrangement resolved on. Mode of election. Persons disqualified.

421. Where the above course is not to be followed, then, at the meeting duly fixed and advertised in terms of the Statute, the creditors elect a fit person to be trustee, or two or more trustees, to act in succession; and in the case of the sequestration of a company, one trustee for all the estates, or separate trustees on the estates of the company and partners; and it is not lawful to elect as trustee the bankrupt, or any persons conjunct or confident with the bankrupt, or who holds an interest opposed to the general interest of the creditors, or whose residence is not within the jurisdiction of the Court of Session. (Ibid., s. 68.)

Procedure by Sheriff, if present at meeting.

422. If the Sheriff be present, he declares the person chosen by the creditors to be trustee; but if there be competition or objections, the Sheriff may either forthwith decide thereon, or make avizandum. (Ibid., s. 69.)

Procedure by preses if Sheriff not present, &c.

Where there is competition for office.

423. When a preses has been elected by the creditors, he reports the proceedings to the Sheriff; and the oaths of the several claimants are to be transmitted to the Sheriff Clerk; and if there be no competition or objection, the Sheriff declares the election; and if there be competition or objection, the parties are, within four days from the date of the said meeting, to lodge their objections, and the Sheriff forthwith gives his decision. (Ibid., s. 70.)

Expenses of competition.

424. No part of the expense of any competition is to be paid out of the estate, but all such expense falls to be paid by the unsuccessful party to the successful party. (Act 1857, s. 4, *postea*.)

Declaration of election by Sheriff not subject to review.

425. The judgment of the Sheriff is final. (Act 1856, s. 71.)

Security by trustee. Bond of caution.

426. The creditors fix a sum for which the trustee shall find security, and also decide on the sufficiency of the caution offered; and the person declared to be trustee must forthwith lodge with the Sheriff Clerk a bond of caution duly executed. (Ibid., s. 72.)

427. Thereafter the Sheriff confirms the election, which confirmation is final; and the Sheriff Clerk issues an act and warrant in terms of the Statute. (Act 1856, s. 73.) ELECTION OF TRUSTEE. Confirmation final.

(2.) *Termination of his Office.*

428. It does not appear that the trustee can by his own act resign office, but a majority in number and value of the creditors present at any meeting called for the purpose may accept of his resignation. (Ibid., s. 74.) TERMINATION OF TRUSTEE'S OFFICE. Resignation.

429. A majority in number and value of the creditors present at any meeting duly called for the purpose, may remove the trustee. (Ibid., s. 74.) Removal without cause.

430. One-fourth of the creditors in value may at any time apply, by petition to the Lord Ordinary, for removal of the trustee; and if the Lord Ordinary be satisfied that sufficient reason has been shown, he removes the trustee, and appoints a meeting of the creditors to be held for devolving the estate on the trustee next in succession, or electing a new trustee. (Ibid., s. 74). Removal on cause shown.

431. The trustee subjects himself to the loss of his office by remaining at any one time for three months furth of Scotland. (Ibid.) Loses office if three months abroad.

432. If the trustee keeps in his hands any sum exceeding £50 belonging to the estate for more than ten days, he must, unless it has been so kept from innocent causes, be dismissed from his office, upon petition to the Lord Ordinary or Sheriff by any creditor. (Ibid., s. 83.) May be dismissed where he keeps funds in his own hands.

433. Any trustee who shall fail to make the annual return, in the form of Schedule (H.) annexed to the Act, is subject to removal. (Ibid., s. 158.) Also if he fails to make annual return.

434. If the trustee shall die, resign, or be removed, or remain at any time for three months furth of Scotland, the Sheriff may order a meeting for devolving the estate on the trustee next in succession, or electing a new trustee; and in that case, and in all cases of a new election of a trustee, the procedure takes place in the like manner as is provided in the case of the first election. (Ibid., s. 74.) Mode of electing a new trustee, &c.

435. When the bankrupt is discharged on a composition contract, the sequestration ceases and is at an end, and the trustee exonered and discharged, but nevertheless he and his Where bankrupt is discharged on a composition, trustee is also discharged.

TERMINATION OF TRUSTEE'S OFFICE.

cautioner are liable, on petition to the Lord Ordinary or Sheriff by the bankrupt or his cautioner, to account for his intromissions and other acts as trustee. (Act 1856, s. 142.)

Application for his discharge on winding-up of estate.

436. After a final division of the funds, the trustee calls a meeting of the creditors to consider as to an application for his discharge, and at such meeting he lays before the creditors the sederunt-book and accounts, with a list of unclaimed dividends, and the creditors may then declare their opinion of his conduct as trustee, and he may thereafter apply to the Court for his discharge. (Ibid., s. 152.)

Transmits sederunt-book to accountant.

437. The trustee must, before his discharge, transmit the sederunt-book to the accountant, who thereupon directs the trustee to deposit the unclaimed dividends in bank. (Ibid., s. 153.)

Unclaimed dividends to be lodged in bank.

(3.) *Evidence of Trustee's Appointment.*

EVIDENCE OF TRUSTEE'S APPOINTMENT.

438. The act and warrant of confirmation is an effectual title to the trustee to perform the duties imposed on him by the Statute, and is evidence of his right and title to the sequestrated estate for the purposes of the Act; and a copy of such act and warrant, purporting to be certified by the Sheriff Clerk, and to be authenticated by one of the Judges of the Court of Session, is to be received in all courts and places within England, Ireland, and Her Majesty's other dominions, as *primâ facie* evidence of the title of the trustee. (Ibid., s. 73.)

Act and warrant. Authenticated copy.

Act and warrant may be printed, &c.

439. The act and warrant may either be printed or in writing, or partly both. (Ibid., s. 175.)

(4.) *Trustee's Right of Property in Estate.*

TRUSTEE'S RIGHTS OF PROPERTY.

440. The nature of the trustee's right in the sequestrated estate appears to be as follows: 1. A *real* right so far as moveables are concerned; 2. A *personal* right so far as concerns heritages, ships, and incorporeal subjects. Nevertheless, the trustee's right is not so pre-eminent a right as that of a purchaser; for in the *first* place, the fraud of the bankrupt can be pleaded against him (1 B. C. 289; *Watt*, 20th Feb. 1846; *Macadam*, 5th Nov. 1872; *Mollison*, 11th March 1873); and, in the *second* place, a purchaser of goods without possession is preferable to him (19 & 20 Vict. c. 60, s. 1).

Real. Personal.

441. The trustee is vested with the bankrupt's property *tantum et tale* as it stood in his person at the date of the sequestration, with the exception of property held by a registered title, which species of property he takes *tantum et tale* as it stands on the record. (*Vide infra*, also *Davidson*, 5th Nov. 1868.)

TRUSTEE'S RIGHTS OF PROPERTY.

Vested tantum et tale with bankrupt's right.

442. If the subjects, whether lands, leases, ships, or incorporeal rights, are held by a title placed on any of the public registers, then the trustee takes them subject to all burdens appearing on the register. (Act 1856, s. 102.)

Where a registered title.

443. If the right in the bankrupt be a personal right to lands, then all qualifications in the right itself, or conditions in a back-bond, or obligations in a letter of trust or mortgage, so long as the right is unrecorded, limits or cuts out the trustee's right. (1 B. C. 283; *Edmond*, 16th Nov. 1855, aff. 26th Feb. 1858.)

If bankrupt's right personal.

444. If the subject be moveable, whether debts (1 B. C. 284), or shares in a trading company (2 B. C. 286), or corporeal moveables (2 B. C. 287), then the trustee takes it subject to all securities and latent rights.

Moveables.

445. If the subject, whether heritable or moveable, be vested in the bankrupt in virtue of a contract, then the trustee, in adopting the contract, takes up the rights as well as the liabilities of the bankrupt, and in none of these cases does he take up any higher or other right than the bankrupt had (2 B. C. 404; *Cuthil*, 21st Nov. 1818; *Kirkland*, 17th May 1831; *Lindsay*, 9th Dec. 1841; *Littlejohn*, 13th Dec. 1855; *Dundas*, 4th Dec. 1857). But of course it is entirely optional with the trustee, whether he take it up or reject it (2 B. C. 413). Only if he elects to take it up, he must declare his option *tempestivé* (*Anderson*, 22d Jan. 1875).

Trustee takes up liabilities in certain cases.

(5.) *How Trustee's Right completed.*

446. In certain cases a form of procedure is necessary for the completion of the trustee's investiture, sometimes to enable him to sell and sometimes to enable him to compete with the rights of third parties. In the case of ordinary moveable rights his title is complete, for by the Statute his act and warrant is declared equivalent to actual delivery, possession, or intimation as at its date. These rights, therefore, he takes

HOW TRUSTEE'S RIGHT COMPLETED.

Moveable rights.

How trustee's right completed.

up and uses or disposes as he thinks proper; but in regard to heritages, ships, incorporeal rights, and subsequent acquisitions, the case is different. (*Vide* Act 1856, s. 102.)

Heritable property.

447. If the subject be heritage, the trustee may no doubt sell without making up a feudal title (Act 1856, s. 105); but to enable him to compete with a disponee or bondholder who may not have completed his title, it will be necessary for the trustee to make up a legal title and have it put upon the record, as, if the disponee or bondholder has his title first completed, the trustee's right is cut out. This was the law under the same clause in 54 Geo. III. c. 137, s. 29 (*Cormack*, 8th July 1829); and s. 102 of Act 1856, which professes to define the extent of the trustee's right, does not make it equivalent to infeftment. (*Vide* Bell's Com. on 2 & 3 Vict. c. 41, p. 168. *Melville*, 1st June 1842.)

Shipping property.

448. If the property be a ship, or the share of a ship, the trustee must, in terms of the Merchant Shipping Act 1854, s. 58, make a declaration and statement of his title, and produce evidence thereof, in order to get himself registered as owner of the ship or share. Directions and forms are given in that Act, s. 59, 60, and 61, and also in s. 74 and 75 as to mortgages. As there is, by s. 102 of Act 1856, no vesting of ships or shares to the same effect as if registration had taken place, it would appear that a purchaser or mortgagee will cut out the trustee, even after sequestration, if his title is first registered.

Patents.

449. Where the property is a patent right, the trustee must complete his title in terms of the Act 15 & 16 Vict. c. 83, s. 35; and where it is the copyright of a design, he does so in terms of 5 & 6 Vict. c. 100, s. 6; in both cases, by obtaining an entry of his right made in the registers applicable to these two different species of property.

Copyrights.

Real estate in Her Majesty's other dominions.

450. If the estate is in any other of Her Majesty's dominions than Scotland, and is a real estate, the trustee registers, enrols, or records his act and warrant in the way that a deed or conveyance would by the laws of the place require to be done; and furthermore, as regards all freehold, copyhold, and leasehold estate within such dominions, it is necessary that the act and warrant shall be registered in the Chief Court of Bankruptcy for the country in which the property is situated (Act 1856, s. 102). But if it is moveable, the act and warrant will

If moveable.

be recognised as a sufficient title; and if necessary, the trustee may get aid from the Scotch courts, such as in the case of *Lindsay*, 10th July 1840, where a creditor in Scotland was interdicted from following out diligence in London against a portion of the estate situated there. How trustee's right completed.

451. If elsewhere abroad, the trustee must seek aid from the laws of the place to enforce the right his act and warrant gives him to the bankrupt's property "wherever situated" (2 B. C. 406), so far as moveables are concerned. But in reference to heritage abroad, he must cause the bankrupt to grant the necessary deeds according to the laws of the country where the heritage is situated (Act 1856, s. 81 and 105), or he must institute proceedings on behalf of the creditors in the courts of that country for the purpose of attaching the subjects. Where in other foreign countries.

452. If the estate was acquired or succeeded to by the bankrupt subsequent to the sequestration, it falls under the sequestration, and the trustee applies to the Lord Ordinary to declare it transferred to and vested in him for the creditors, and in this way acquires a real right to the estate. (Ibid., s. 29 and 103.) Subsequent acquisitions.

(6.) *Trustee's Right in Competition with other Rights.*

453. In competition with a disponee or a bondholder, or any other party holding a feudal title, the trustee will only be preferred if his title is first upon the record. (*Vide supra.*) Trustee's right in competition with other rights.

454. If the estate is under an effectual adjudication, he takes it for the creditors generally where the sequestration is within year and day of the adjudication (ibid., s. 107). Where the adjudication is prior to that period, he would take the estate subject to the adjudger's preferable right if it has been completed by sasine; while, on the other hand, if he completes his own title first, he will cut out the adjudger. Disposition. Adjudication.

455. If the property is under inhibition, he makes up his title, or sells, and the inhibition has no effect except in the rankings. (Ibid., s. 102 and 105.) Inhibition.

456. If the right is the tenant's right in a leasehold subject, and the competition arises with an assignee, then, *in the first place*, in the case of leases registered under the Act 20 & 21 Vict. c. 26, the trustee will only be preferred if his title is first on the register; *and, in the second place*, in cases of unregis- Assignation of tenant's right in a lease.

Trustee's right in competition with other rights.

tered leases, if the assignation has been followed by intimation, but without possession, then, as the trustee's right has the same effect as if possession had been obtained, he would seem entitled to be preferred to the assignee (Act 1856, s. 102)—for, while intimation to the landlord by one of two assignees entitles the first to possession (*Inglis*, 26th Feb. 1829), yet it is possession alone which gives the real right (1 B. C. 66 and 67; *Brock*, 29th Nov. 1822, and 5th March 1830, aff. 23d Sept. 1831; 5 W. and S. 476; *Russell*, 3d Dec. 1823, and 3d July 1827, aff. 4th April 1831; 5 W. and S. 256); *but, in the third place*, if the assignation has been followed by possession, the trustee is plainly cut out of all right to the lease (1 B. C. 66.)

Assignation to landlord's right in a lease.

457. If the right is the landlord's right in a lease—viz., the right to the rents—then, in competing with an assignee, the trustee will be preferred if the assignation was not intimated prior to the trustee's right; but if intimated, then the assignee is to be preferred. In that case, the trustee must complete his right by sasine, and take the position of a singular successor, and in that capacity his real right to the lands will cut out the personal right of the assignee. (*Vide supra.*)

Vendition, &c., of shipping property.

458. In the case of shipping property, the trustee will only be preferred to a vendee or mortgagee in the event of his getting himself first registered in terms of the Merchant Shipping Act.

Of patents, &c.

459. If it be a patent right or a copyright of a design, the rule is the same as in the case of shipping property.

Diligence.

460. If the assets are under arrestment or poinding, he takes them for the creditors generally where the arrestment or poinding was within sixty days of the sequestration (Act 1856, s. 108). And in the case of heritable creditors having used poinding of the ground or mails and duties, the trustee cannot compete with them, where they are in possession under their securities (Conveyancing Act, 1874, s. 55).

Assignation of a debt.

461. In competition with the assignee of a debt, the trustee, by virtue of his act and warrant, which is declared equivalent to intimation, will be preferred, if the assignee's right has not been completed by intimation prior to the bankruptcy. (Act 1856, s. 102.)

Party claiming goods.

462. In competition with a party claiming a right to goods, the trustee, by virtue of his act and warrant, which is declared equivalent to actual delivery or possession, will take the goods, provided that party has not had his right completed by possession (*i.e.*, actual or constructive possession, and not symboli-

cal possession, though followed by an instrument of possession, *Roberts*, 28th July 1842), with the exception that a purchaser of goods without delivery will, until the Mercantile Amendment Act, 19 & 20 Vict. c. 60, s. 1, be preferred to the trustee. TRUSTEE'S RIGHT IN COMPETITION WITH OTHER RIGHTS.

463. As to purchasers of the estate from the bankrupt after sequestration, it is to be observed—*first*, that in the case of a *bona fide* purchaser, who is in possession of moveable effects received from the bankrupt after sequestration, but in ignorance thereof, and, when ignorant thereof, for a price paid, or which he is ready to pay, he shall not be obliged to restore the effects (Act 1856, s. 111); *secondly*, that no purchaser for valuable consideration of any freehold, copyhold, or leasehold estate situated in any of Her Majesty's dominions except Scotland, shall be affected by the bankruptcy until the trustee's act and warrant be registered in the chief court of bankruptcy where the estate is situated (ibid., s. 102); and, *thirdly*, that if any purchase is made of any estate so situated by any person, for valuable consideration, and without notice of the sequestration prior to such further registration, enrolment, or recording, as shall be necessary by the laws of the place where the estate is situated, such purchase shall not be invalidated by the existence of such act and warrant, or by the subsequent registration, enrolment, or recording thereof (ibid., s. 102). Purchaser. Purchase after sequestration.

464. In competition with latent trusts or latent claims of any kind, the trustee is preferred in all cases of property with with a registered title (1 B. C. 283), such as heritage (*Duncan*, 8th Dec. 1803), or a heritable bond (*Jeffrey*, 15th May 1835; 1 S. & M. 767), or shipping property (*M'Arthur*, 20th June 1844); but not in the case of ordinary personal or moveable subjects, such as an interest in a trading company (*Gordon*, 5th Feb. 1824). In the case of shares in a railway company, however, the trustee must complete his title before a purchaser, else he is cut out (*Morrison*, 3d Feb. 1876). Latent trusts and claims.

465. In competition with the law agent's lien over titles, the trustee is entitled *ante omnia* to the custody of the documents, reserving the agent's claim in the ranking (*Johnston*, 23d Jan. 1823; *Paul*, 2d Feb. 1826; *Skinner*, 2d Jan. 1865); but where the trustee has in any case received titles from a law agent subject to his lien, he is bound to give effect to the preference in the ranking, and cannot free himself of liability by returning the deeds (*Renny*, 8th Feb. 1847. *Vide* Law Agent's Lien, *antea*.) Lien of law agent.

(7.) *Trustee's Right of Management where no Right of Property.*

TRUSTEE'S RIGHT OF MANAGEMENT.

466. In certain cases the trustee, without reference to rights of property, has a preferable right to the management of the estate in whole or in part. 1. Where the estate is under the administration of trustees, by virtue of a trust-deed for behoof of the creditors, these trustees must denude in favour of the trustee under the sequestration, reserving all claims of preference or security acquired under the trust-deed (*Broughton*, 2d July 1812; A. B., 21st Nov. 1829). 2. If the estate of a deceased debtor is under the management of heirs, trustees, executors, executors-creditors, or successors of any kind, they must also denude (Act 1856, s. 29, 106, 110). 3. A heritable creditor cannot interfere with the trustee's management, if the latter begin proceedings first with a view to a sale (ibid., s. 114). 4. If a fund is under an effectual arrestment such as the sequestration cannot cut down, still the trustee is entitled to it, subject to a claim of preference by the arrester in the ranking (*Lindsay*, 10th July 1840; *Gordon*, 12th Jan. 1842; *Brown*, 1st Feb. 1849). 5. If the sequestration is prior in date to an English commission of bankruptcy, the trustee will be preferred (*Geddes*, 4th June, 1824); but a colonial commission of bankruptcy held to carry the estate from the trustee if first in date, when the assignee claims it (*Stewart*, 10th July 1851). 6. But the trustee has no right of management over property held by the bankrupt *qua* executor, or the like (Act 1856, s. 102, note *e*, *postea*).

Where estate under a trust-deed for creditors.

Or under executors, &c.

Heritable creditor.

Arrestment.

English commission of bankruptcy.

Where bankrupt holds property qua executor.

(8.) *Powers of Trustee.*

TRUSTEE'S POWERS.

467. The trustee occupies a peculiar position; he is at once the representative of both creditors and bankrupt, but in different senses; *i.e.*, 1. He represents the creditors—not in their individual capacity of creditors, for he is not assignee of their claims—nor altogether in their corporate capacity, for they retain the power to award protection or discharge to the bankrupt—but he represents them in the fiduciary character of trustee in having a right to the estate for their behoof, and as their organ in a corporate capacity in the exercise of certain statutory powers under the sequestration. 2. And he also represents the bankrupt, not in his liabilities or in his general

Position of trustee.

powers and duties, but in his rights of property and power to sue thereanent. (2 B. C. 379; Act 1856, s. 73, 102.) TRUSTEE'S POWERS.

468. The trustee has power to bind the estate, and the interest of the creditors and bankrupt therein, where he acts within the Statute; but if he goes beyond the Statute, then he binds those creditors under whose special authority he acts, or himself personally where he acts without authority (*Kirkland*, 9th March 1838); and as he can bind the estate, so he can bind a subsequent trustee thereon (*Davidson*, 14th Dec. 1826). His power of binding estate and the creditors.

469. The trustee is entitled to set aside any deed made void by the Statute, and all alienations of property by the bankrupt while insolvent or notour bankrupt which are voidable by Statute or at common law, and that for behoof of the whole body of creditors; and in so doing he may take the benefit of any presumption which would have been competent to any creditor. (Act 1856, s. 11.) May set aside preferences, &c.

470. The trustee may, along with the commissioners, consent to the bankrupt making a new application for liberation from prison where a former application has been refused. (Ibid., s. 45.) May consent to bankrupt making a new application for liberation.

471. The trustee has no relief in respect of any payment made to the agent or other person employed by him for money advanced, or expense incurred, or remuneration, in relation to the affairs of the estate, against any creditor who has merely lodged an oath and claim, or has been ranked or received payment of a dividend or appeared or voted at a meeting, but reserving his relief against the estate, or against those creditors or others who may on other grounds be liable in relief. (Ibid., s. 57.) No relief against creditors for expenses, &c.

472. The trustee may, with consent of the commissioners, within two months after an oath, specifying the value of a security, obligation, or claim, has been used in voting, or assenting to or dissenting from the bankrupt's composition or discharge, require from the creditor, at the expense of the estate, a conveyance thereof on payment of the value, and 20 per centum thereon. (Ibid., s. 62.) May demand assignation of security from creditors where valued for voting.

473. The trustee may, with said consent, also require, at the expense of the estate, from any creditor who has in his oath, with a view to a dividend, put a specified value on any security which he holds over any part of the estate, a convey- Also where valued for ranking.

TRUSTEE'S POWERS.

ance of such security on payment of said value out of the first of the common fund. (Act 1856, s. 65.)

May recover estate, and sue.

474. The trustee, by virtue of his act and warrant, is entitled, in all courts and places in England, Ireland, and her Majesty's other dominions, to recover any property belonging or debts due to the bankrupt, and to maintain actions in the same way as the bankrupt might have done. (Ibid., s. 73.)

New trustee has same power.

May apply for special allowance to bankrupt.

475. Any succeeding or new trustee is vested with the powers provided with reference to former trustees (ibid., s. 74). Also the trustee, with concurrence of a majority of creditors in value present at a regular meeting, and if the accountant in bankruptcy shall report in its favour, may apply to the Lord Ordinary or the Court for a special allowance to be made to the bankrupt out of the estate (ibid., s. 78).

May apply to Sheriff to compel bankrupt to give assistance.

476. The trustee may apply to the Sheriff to compel the bankrupt to give every information and assistance necessary to enable the trustee to execute his duty, and also to grant any deed which may be requisite for the recovery or disposal of the estate. (Ibid., s. 81.)

May apply for re-examination of bankrupt.

477. The trustee may apply for re-examination of the bankrupt. (Ibid., s. 88.)

Apprehension of bankrupt.

478. He may also apply to the Lord Ordinary for warrant to apprehend and transmit the bankrupt to the place of his examination when he is in any part of Great Britain and Ireland except Scotland. (Ibid., s. 89.)

Examination of other parties.

479. The trustee may at any time apply to the Sheriff to order the examination of the bankrupt's wife, family, clerks, servants, factors, law-agents, and others who can give information relative to the estate. (Ibid., s. 90.)

In open court.

480. The trustee may apply to have the examination of the bankrupt and other parties in open court. (Ibid., s. 92.)

May put all lawful questions.

481. The trustee may put any lawful question to the bankrupt and any of such other persons, and also call on them to produce documents. (Ibid., s. 93.)

May call meetings.

482. The trustee may at any time call a meeting of the creditors. (Ibid., s. 98.)

New acquisitions.

483. The trustee may examine the bankrupt as to any new acquisition or succession after the date of the sequestration and before the date of his discharge. (Ibid., s. 103.)

Complete titles.

484. The trustee may complete titles in his own person, whom failing in favour of his successor, or in the person of

the bankrupt; and he may, without making up any title in his person, grant conveyances of the heritable estate as the bankrupt might have done. (Act 1856, s. 105.) TRUSTEE'S POWERS.

485. The trustee may apply to the Lord Ordinary to have transferred to and vested in him the heritable estate of a bankrupt, where the sequestration is awarded after his death and his successor has made up a title. (Ibid., s. 106.) Where successor has made up title.

486. The trustee may concur in a sale of the heritable estate by a heritable creditor in order to fortify the title. (Ibid., s. 112.) Sale by heritable creditor.

487. The trustee may sell the heritable estate with concurrence of the heritable creditor. (Ibid., s. 113.) May sell heritable estate.

488. The trustee may by himself carry through a sale of the heritable estate, provided he does so in terms of a resolution of the creditors made before a heritable creditor having a power of sale shall have commenced proceedings for sale, or, if commenced, have been unduly delayed. (Ibid., s. 114.) Without any concurrence.

489. The trustee, with concurrence of a majority of the creditors in number and value, and of the heritable creditors, if any, and of the accountant, may sell the heritable estate by private bargain, and on such terms and conditions as the parties may fix. (Ibid., s. 115.) Sale by private bargain.

490. The trustee, with a report thereon by the accountant in bankruptcy, and on cause shown, may apply to the Lord Ordinary or the Court for an interim warrant for payment of preferable claims out of the price of the heritable estate, or to authorise an interim scheme of division out of the price. (Ibid., s. 117.) Payment of preferable claims.

491. The trustee cannot prevent the heritable creditor from executing a poinding of the ground, or obtaining a decree of mails and duties. (Ibid., s. 118.) Poinding of grounds, &c.

492. The trustee cannot purchase any estates. (Ibid., s. 120.) Cannot purchase estate.

493. The trustee, when adjudicating on the claims of creditors, may examine the bankrupt creditor, or any other party, on oath relative thereto. (Ibid., s. 126.) May examine parties on oath.

494. The trustee, with concurrence of commissioners, may apply for judicial authority to alter the periods for payment of the dividends where the estate consists chiefly of land, and in any other cases where it may be necessary. (Ibid., s. 135.) Alteration of periods for dividends.

TRUSTEE'S POWERS.

May require bankrupt to take oath.

495. The trustee may require the bankrupt to make an oath instead of a declaration prior to his discharge. (Act 1856, s. 140.)

Appeal against commissioner's deliverance.

496. The trustee may appeal against the deliverance of the commissioners fixing his remuneration, &c. (Ibid., s. 141.)

Report on the bankrupt's conduct.

497. The trustee may, upon the bankrupt's requisition, prepare a report on his conduct at any time after his examination, with a view to his discharge without composition. (Ibid., s. 146.)

Retention of creditor's dividend.

498. The trustee may retain the dividend of any creditor guilty of misconduct in promoting the bankrupt's discharge, and may also raise legal proceedings against the creditor. (Ibid., s. 150.)

Bankrupt's discharge annulled.

499. The trustee may apply to have bankrupt's discharge annulled where he has been guilty of granting preferences, &c., with a view to procuring his discharge. (Ibid., s. 151.)

Right of appeal.

500. The trustee has the right of appeal in all cases. (Ibid., s. 169, 170, 171, 172, and 173.)

Right to compound, &c.

501. The trustee may, with consent of commissioners, compound and transact, or refer to arbitration, any questions which may arise regarding the estate, or any demand or claim thereon. (Ibid., s. 176.)

Criminal prosecution.

502. The trustee may, with authority of a majority in value of the creditors at a special meeting, and with concurrence of the Lord Advocate, prosecute any party guilty of wilful falsehood in any oath. (Ibid., s. 178.)

Opening of bankrupt's letters.

503. The trustee may apply to the Lord Ordinary or Sheriff for an order to the effect that, for a period not exceeding three months from the date of the order, all letters addressed to the bankrupt shall be delivered by the postmaster-general, or the officers acting under him, to the Sheriff Clerk or the trustee, to be opened in presence of the Sheriff. (Ibid., s. 179.)

Power to execute general duties.

504. Finally, the trustee has power to do all the duties imposed upon him by the Statute; for the imposition of a duty, as a matter of course, implies a legal power to do it. (*Vide* Duties, *infra*.)

TRUSTEE'S DUTIES.

(9.) *Duties of Trustee.*

To pay expenses of obtaining sequestration.

505. The trustee, out of the first of the funds which come into his hands, pays the petitioning or concurring creditor the expense of obtaining the sequestration, &c. (Ibid., s. 41.)

TRUSTEE'S DUTIES.

506. The trustee applies to the Sheriff for personal protection to the bankrupt whenever the creditors shall vote it. (Act 1856, s. 44.)

To apply for personal protection.

507. The trustee receives productions from the creditors of their oaths and grounds of debt. (Ibid., s. 49.)

To receive productions by creditors.

508. The trustee thereupon marks the oaths and grounds of debt with his initials, and makes an entry thereof in the sederunt-book, and of the date when the same were produced, and, if required, he returns to the creditors the grounds of debt. (Ibid., s. 50.)

To make entry in sederunt-book, and return productions to creditors.

509. The trustee sets apart a dividend for any creditor who is not in possession of his accounts and vouchers previously to the period assigned for lodging claims with a view to a dividend, and who shall state in his oath the cause of the same not being produced, and in whose hands, to the best of his knowledge, they are, till a reasonable time be afforded for production thereof, or for otherwise establishing his debt according to law. (Ibid., s. 50.)

To set apart dividend where creditor not in possession of vouchers.

510. The trustee is to call on any creditor, or his agent or mandatory, to rectify any oath which shall appear to him to be not framed in the manner required by the Act, unless it shall appear that this was done for some improper or fraudulent purposes, or that injury can be qualified by the other creditors, or any of them, in respect thereof. (Ibid., s. 51.)

To correct claims by creditors.

511. The trustee, on application by a creditor whose claim depends upon a contingency which is unascertained at the date of lodging his claim, puts a value thereon as at the date of such valuation. (Ibid., s. 53.)

To value contingent claims.

512. The trustee, on application by a creditor whose claim is made in respect of an annuity granted by the bankrupt, puts a value on the annuity; regard being had to the original price given for the annuity, deducting therefrom such diminution in the value of the annuity as shall have been caused by the lapse of time since the grant thereof to the date of the sequestration. (Ibid., s. 54.)

To value annuity.

513. The trustee on the estate of a partner, before ranking a company creditor who claims on the partner's estate, puts a valuation on the estate of the company, and deducts from the claim of such creditor such estimated value, and ranks and pays him a dividend only on the balance. (Ibid., s. 66.)

To value claim on company estate, and deduct from claim on partner's estate.

514. A succeeding or new trustee performs the duties pre-

TRUSTEE'S DUTIES.

scribed by the Statute for the preceding trustee, and calls to account the former trustee, or his heirs or representatives. (Act 1856, s. 74.)

Duties of new trustee.

To record recall of mandates, and call meeting for election of new commissioner.

515. The trustee, on receiving intimation of the recall of a mandate from a creditor to a party who has been elected a commissioner, records the same in the sederunt-book; and in all cases where a commissioner has declined to act, or resigned, or become incapacitated, the trustee calls a meeting of creditors to elect a new commissioner. (Ibid., s. 75.)

To apply for renewal of protection.

516. Where renewal of personal protection has been voted to the bankrupt, the trustee makes the necessary application to the Sheriff. (Ibid., s. 77.)

To have abbreviate recorded.

517. Every trustee, within twenty-one days after confirmation, presents an abbreviate to the keeper of the Register of Abbreviates of Adjudications, to be recorded. (Ibid., s. 79.)

To take possession of estate and documents.

518. The trustee, as soon as may be after his appointment, takes possession of—1. The bankrupt's estate and effects; and, 2. Of his title-deeds, books, bills, vouchers, and other papers and documents. (Ibid., s, 80.)

To make up inventory and valuation.

519. He also, as soon as may be, makes up—1. An inventory of such estate and effects; and, 2. A valuation, showing the estimated value and the annual revenue thereof. (Ibid., s. 80.)

To send copies to accountant.

520. And he forthwith transmits copies of such inventory and valuation to the accountant. (Ibid., s. 80.)

To receive and engross bankrupt's state of affairs.

521. The trustee receives from the bankrupt a state of his affairs and rental of his heritable property, and engrosses the same in the sederunt-book to be kept by him (ibid., s. 81.) And it is his duty to compel the bankrupt to comply with the Statute in this respect (*vide* s. 81, note *a*).

To manage, recover, and realise estate.

522. The trustee manages, realises, and recovers the estate wherever situated, and converts the same into money, according to the directions given by the creditors at any meeting; and if no such directions are given, he does so with the advice of the commissioners. (Ibid., s. 82.)

To lodge money in certain banks, &c.

523. The trustee must lodge all money which he shall receive in bank in his official character, and at the highest rate of interest which can be procured for the same. (Ibid., s. 82.)

To lodge all sums above £50.

524. The trustee cannot keep in his hands any sum exceeding £50 belonging to the estate for more than ten days, without being subject to penalties and to dismissal. (Ibid., s. 83.)

TRUSTEE'S DUTIES.

To keep sederunt-book.

525. The trustee must keep a sederunt-book, in which he records all minutes of creditors and of commissioners, states of accounts, reports, and all the proceedings necessary to give a correct view of the management of the estate, unless where the document is of a confidential nature, such as the opinion of counsel on any matter affecting the interests of the creditors or the estate. (Act 1856, s. 84.)

To keep accounts.

526. He must also keep regular accounts of the affairs of the estate. (Ibid., s. 84.)

To send copies to accountant.

527. He transmits to the accountant in bankruptcy, before each of the periods assigned in the Act for payment of a dividend, a copy, certified by himself, of such accounts, in so far as not previously transmitted. (Ibid., s. 84.)

To make sederunt-book and accounts patent.

528. The trustee must make the sederunt-book and accounts patent to the commissioners and to the creditors and their agents at all times; but he is not bound to exhibit confidential documents to any other person than the commissioners. (Ibid., s. 84.)

To apply to Sheriff to fix bankrupt's examination.

529. The trustee, within eight days after the date of his act and warrant confirming him, applies to the Sheriff to name a day for the public examination of the bankrupt. (Ibid., s. 87.)

To publish Gazette notice, and send letters to creditors.

530. On the Sheriff granting the usual warrant on such application, the trustee—1. Publishes an advertisement in the 'Edinburgh Gazette;' and, 2. Sends by post or otherwise special notice to the creditors, intimating his election, the day, hour, and place fixed for the examination of the bankrupt, and also a specified day for the next meeting of creditors; and also the period within which claims should be lodged. (Ibid., s. 87.)

To pay allowances to witnesses.

531. The trustee pays the allowances of witnesses to such parties as shall be examined other than the bankrupt. (Ibid., s. 90.)

To prepare report to second meeting, &c.

532. Prior to the second statutory meeting of creditors, the trustee prepares a report setting forth the state of the bankrupt's affairs, and an estimate of what the estate may produce, which report he exhibits at the meeting of creditors, and gives all explanations relative thereto. (Ibid., s. 96.)

To call meetings.

533. The trustee must call a meeting of the creditors at any time when required by one-fourth in value of the creditors ranked on the estate, or by the accountant. (Ibid., s. 98.)

534. The trustee only sends notifications of the day or place

TRUSTEE'S DUTIES.

To send notices to creditors under £20 if required.

of meetings by post to creditors whose debts shall be under £20, when they shall have given directions in writing that the same shall be sent; and no notification need be sent to any creditor who has directed that none shall be sent. (Act 1856, s. 100.)

To secure subsequent acquisitions.

535. The trustee, on coming to the knowledge of any estate having, after the date of the sequestration and prior to the bankrupt's discharge, been acquired by the bankrupt, or descended or reverted or come to him, presents a petition setting forth the circumstance to the Lord Ordinary in order to have the estate vested in him for the creditors. (Ibid., s. 103.)

To record abbreviate against successors.

536. The trustee, within eight days after the Lord Ordinary has declared the heritable estate of a deceased debtor to which his successor has made up a title to be vested in him, causes an abbreviate to be recorded in the Register of Abbreviates of Adjudications. (Ibid., s. 106.)

To allow expenses to arrester or poinder.

537. The trustee is to allow any arrester or poinder before the date of the sequestration, who has been deprived of the benefit of his diligence, to have preference out of the funds or effects so arrested or poinded for the expense *bona fide* incurred by him in such diligence. (Ibid., s. 108.)

To make up scheme of division among heritable creditors.

538. The trustee makes up a scheme of ranking and division of the claims of the heritable creditors and other creditors on the price of the heritable estate sold; and such scheme is to be reported by him to the Lord Ordinary or either division of the Court of Session. (Ibid., s. 116.)

To retain dividend for foreign creditor when too late.

539. When any creditor not resident within Great Britain or Ireland at the date of the sequestration, or at any time within five months thereafter, shall lodge his claim and grounds of debt fourteen days previous to a dividend, though not in time to entitle him to participate in the dividend, the trustee is to make such deduction from the divisible fund as shall meet his dividend. (Ibid., s. 124.)

To make up state for dividend.

540. Immediately on the expiration of four months from the date of the sequestration, the trustee is to proceed to make up a state of the whole estate of the bankrupt, of the funds recovered by him, and of the property outstanding (specifying the cause why it has not been recovered), and also an account of his intromissions, and generally of his management. (Ibid., s. 125.)

541. The trustee also, within the said fourteen days, exa-

mines the creditors' claims, and, in writing, rejects or admits them, or requires further evidence in support thereof; and in case he reject any claim, he states the grounds of such rejection, and notifies the same to the creditors. He finally makes up classified lists of the creditors whose claims have been dealt with. (Act 1856, s. 126, 127.)

TRUSTEE'S DUTIES.

To adjudicate on claims, and make up lists of same.

542. The trustee, within eight days after the expiration of such fourteen days, gives notice in the 'Edinburgh Gazette' of the time and place of the payment of the dividend, and also notifies the same to the creditors. (Ibid., s. 127.)

To give Gazette notice of dividend.

543. The trustee, before the expiration of six months from the sequestration, makes up a scheme of division; and he sends notice to each creditor of the amount of the dividend to which he may be entitled. (Ibid., s. 128.)

To make up scheme of division, and send notices.

544. On the expiration of six months from the sequestration, and at the place appointed, the trustee pays to the creditors the dividends allotted to them; and he lodges the dividends apportioned to those claims which are under appeal, and to contingent creditors or other claimants not then entitled to uplift the same, in bank. (Ibid., s. 129.)

To pay or consign dividends.

545. On the expiration of eight months a similar procedure is gone through with a view to the second dividend. (Ibid., s. 130, and notes, *postea*.)

Similar procedure preparatory to second dividend.

546. On the expiration of ten months the trustee makes payment of the second dividend. (Ibid., s. 131, and notes, *postea*.)

To pay or consign same.

547. The like procedure is to be followed in order that a dividend may be made on the expiration of every three months. (Ibid., s. 132, and notes, *postea*.)

Same procedure as to subsequent dividends.

548. The trustee, on receiving directions from a competent meeting of creditors, makes the necessary application to the Lord Ordinary or Sheriff for acceleration of any of the dividends. (Ibid., s. 133.)

To apply for acceleration of dividends.

549. The trustee, on receiving the authority of the commissioners to that effect, gives notice in the next 'Edinburgh Gazette' that any of the dividends have been postponed. (Ibid., s. 134.)

To give Gazette notice of postponement.

550. If, on the lapse of twelve months, it shall appear to the trustee and commissioners expedient to sell the estates not disposed of, they may fix a meeting of creditors to take the same into consideration; and the trustee, besides advertising the same, sends by post to the creditors a notice of the meet-

To call meeting for finally winding up estate.

TRUSTEE'S DUTIES.

To sell estate, &c. by auction.

ing, with a valuation of the estates to be disposed of; and if the meeting decide in favour of a sale in whole or in lots, the trustee causes the estates to be sold by auction, after notice thereof published at least one month previous to the sale, once in the 'Edinburgh Gazette,' and in such other newspapers as the meeting shall appoint. (Act 1856, s. 136.)

To give Gazette notice of offer of composition, and send letters.

551. Where an offer of composition has been made and entertained at the first meeting, the trustee advertises in the 'Edinburgh Gazette' that it will be decided upon at the next meeting, and transmits by post letters to the creditors, containing a notice of such resolution, and of the meeting, and specifying the offer and security proposed, and giving an abstract of the state of the affairs, and of the valuation of the estate, to enable the creditors to judge of the offer. (Ibid., s. 137.)

To report acceptance to Sheriff.

552. If the offer is finally accepted, the trustee, on receiving a bond of caution for the composition, reports the resolution of the meeting, with the bond, to the Bill Chamber Clerk or Sheriff Clerk, that the approval of the Court may be obtained thereto. (Ibid., s. 138.)

Similar procedure if offer made at subsequent meetings.

553. Where an offer of composition is duly made at any other competent meeting, and the same is entertained by the necessary majority, the trustee follows forth a like procedure to the above. (Ibid., s. 139.)

To proceed with duties as if no offer.

554. Notwithstanding such offer the trustee proceeds in the execution of his duty as if no such offer had been made until the deliverance by the Court be pronounced. (Ibid., s. 142.)

Procedure in case of a renewed offer.

555. Where an offer of composition has been made and rejected, or has become ineffectual, and the requisite statutory majority of creditors have assented in writing to a subsequent offer, the trustee calls a meeting and proceeds *ut supra*. (Ibid., s. 145.)

To prepare and deliver report to bankrupt as to his conduct.

556. The trustee, at the expiration of five months from the sequestration, must, upon the requisition of the bankrupt, and with a view to his discharge, prepare and deliver to the bankrupt a report with regard to his conduct. (Ibid., s. 146.)

To distribute preferences recovered.

557. Where any sums are recovered by the trustee from any creditor who has been guilty of any illegal conduct with regard to the bankrupt's discharge, the trustee distributes the same among the other creditors, under deduction of the expenses of recovery. (Ibid., s. 150.)

558. After final division of the funds, the trustee calls a meeting of the creditors by advertisement and letters to consider as to an application for his discharge; and at such meeting he lays before the creditors the sederunt-book and accounts, with a list of unclaimed dividends. (Act 1856, s. 152.)

TRUSTEE'S DUTIES.

To call meeting for his own discharge.

559. The trustee, before his discharge, transmits the sederunt-book to the accountant, and must lodge in bank the whole dividends not then claimed. (Ibid., s. 153.)

To send sederunt-book to accountant, and consign unclaimed dividends.

560. The trustee cannot pay any accounts for law business incurred by him until they have been submitted for taxation. (Ibid., s. 154.)

Cannot pay law costs without taxation.

561. Any surplus of the estate falls to be paid to the bankrupt, or to his successors or assignees. (Ibid., s. 155.)

To pay surplus to bankrupt.

562. Each trustee, within fourteen days after the 31st day of October in each year, or on the first lawful day thereafter, delivers, free of expense, to the Sheriff Clerk of the county, a return, in the form of the Schedule (H.) annexed to the Act, (Ibid., s. 158.)

To make annual return to Sheriff Clerk.

563. On a resolution by a competent meeting of creditors that the bankrupt shall only be entitled to apply for and obtain a decree of cessio, the trustee, after giving eight days' previous notice to the bankrupt, reports such resolution to the Court. (Ibid., s. 168.)

To report resolution that debtor only entitled to cessio.

(10.) *Liabilities of Trustee.*

564. The trustee is not liable in the obligations of the bankrupt; he is only bound to allow the creditors a ranking. (Ibid., s. 126 and 129.)

TRUSTEE'S LIABILITIES.

Not liable in bankrupt's debts.

565. The trustee is, however, bound to perform all his statutory duties, and incurs the following personal liabilities by non-performance: 1. Censure by the Court (ibid., s. 158 and 159; *Urquhart*, 22d May 1855). 2. Removal from his office (ibid., s. 74, 83, 158, and 159). 3. Penalties (ibid., s. 83 and 125). 4. An action for implement—*e.g.*, to make a report (*Kemp*, 28th Feb. 1832); to apply for bankrupt's protection (*Inglis*, 13th July 1859); to pay a dividend which he should have laid aside (*Houston*, 25th Nov. 1841, and 20th May 1842); to pay a law-agent a preference which he had over a

Liable to perform statutory duties.
Censure.
Removal.
Penalties.
Implement.

TRUSTEE'S LIABILITIES.

fund which the trustee had uplifted (*Swan*, 15th Jan. 1859); or to pay a landlord his rent, in consequence of taking the subject of his hypothec (*Davidson*, 14th Dec. 1826); or to account for intromissions and other acts as trustee (Act 1856, s. 86, and 142). 5. Damages for non-implement (*vide* ibid., s. 72, 86, and 142).

Damages for non-implement.

Liability for his own acts.

566. The trustee is personally responsible for his own acts and obligations, and may thus incur many liabilities—viz.: 1. He may raise a lawsuit, or adopt one carried on by the bankrupt, and, in doing so, he subjects himself to the risk of the costs, past and future, on both sides (ibid., s. 73, and notes, *postea*).

Lawsuit.

Adoption of contract.

2. He may also adopt a feu-contract or lease, or any other contract of the bankrupt, and in doing so he incurs liability for feu-duties, rents, or whatever prestations are exigible against the bankrupt under the contract (*Cathil*, 21st Nov. 1818, F. C.; *Kirkland*, 17th May 1831, aff. 25th March 1833, 6 W. S. 340), even to the extent of arrears (*Dundas*, 4th Dec. 1857), unless the landlord or superior has waived his claim (*M'Lean's Trustee*, 21st Nov. 1850); and after having adopted such contracts, he cannot abandon them (*Kirkland, supra*).

Intromissions.

3. Without adopting a contract of the bankrupt, the trustee may simply intromit with the subject of the contract, which he is entitled in the interest of the creditors to do (*Mitchell*, 23d Jan. 1834); and, in the capacity of intromitter, he is liable to account to the parties preferably interested (*Balfour*, 20th May 1817, H.; *Harvie*, 2d July 1833).

Damages for wrongs.

4. The trustee may be liable in damages for his own wrongs—*e.g.*, for wrongous interdict (*Graham* 9th July 1824), or wrongous imprisonment (*Gordon's Executors*, 13th July 1825; 3 *Mur.* 515), or wrongous destruction of a document (*Smith*, 10th July 1830, aff. 4th February 1831, 5 W. S. 1), or wrongous retention of the bankrupt's premises, which is quite different from adoption of the lease (*Stead*, 30th Jan. 1835), or unwarrantable opposition to the landlord resuming possession (*Richardson*, 24th June 1835).

Where trustee enters into new contract.

5. The trustee may enter into a new contract or transaction, and if so he is personally liable under it (*Jeffray*, 5th July 1821, aff. 11th June 1824, 2 S. (Ap.) 349; *Watson*, 29th Nov. 1823, aff. 11th June 1824, 2 S. (Ap.) 349).

He cannot in such cases plead want of funds.

6. In all such cases he cannot plead the want of trust funds, but is held bound to have seen that he had funds before incurring the responsibility (2 B. C. 379;

Jeffray, 5th July 1821, aff. 11th June 1824; 2 S. (Ap.) 349; *Jeffray*, 10th Feb. 1831; *Kirkland*, 17th May 1831; *vide Marquess of Abercorn*, 16th Dec. 1835; *Jeffray*, 11th June 1824; 2 S. (Ap.) 349; *White*, 2d March 1843). TRUSTEE'S LIABILITIES.

567. It does not seem that a trustee is personally liable for the obligations of a former trustee; but *vide Davidson*, 14th Dec. 1826. Liability for former trustee.

568. Of course the trustee has relief against the sequestrated estate where he has acted *within* the limits of the Statute in incurring the liability; where he has gone *beyond* the Statute, he has relief against any creditors who have authorised him (*Kirkland*, 9th March 1838). But he will have no relief where he has been guilty of fraud in incurring the liability (*Maben*, 3d June 1837). His relief.

569. It would seem that a decerniture against the trustee *qua* trustee means personal liability (*Jeffray*, 10th Feb. 1831); but the practice of the Court has not been uniform on this point (*vide Houstoun*, 25th Nov. 1841; *Beadie*, 21st June 1850). Form of decerniture against trustee.

(11.) *Law Procedure against Trustee.*

570. The trustee may be censured or removed from his office, and found liable in expenses, under a complaint, at the instance of any one creditor, or the accountant, for failure to make up the annual return ordered by Act 1856, s. 158. (Act 1856, notes, *postea*.) PROCEDURE AGAINST TRUSTEE. Petition for censure by a creditor or the accountant.

571. Upon the report of the accountant regarding the trustee's conduct, the Lord Ordinary or Court of Session may censure such trustee, or remove him from his office, or otherwise to deal with him. (Ibid., s. 159.) Upon report of accountant.

572. One-fourth of the creditors in value may apply to the Lord Ordinary for removal of the trustee, and if satisfied that sufficient reason has been shown, he removes the trustee. (Ibid., s. 74, and notes, *postea*.) One-fourth of creditors may raise petition.

573. When the trustee has been guilty of improperly retaining the funds of the estate in his own hands, he may be dismissed from his office. (Ibid., s. 83, and notes, *postea*.) Dismissal on petition for retaining funds.

574. In regard to the improper retention of moneys in the trustee's own hands, the Act prescribes that the commis- Commissioners in-

PROCEDURE AGAINST TRUSTEE.

sioners shall debit him with £20 on every £100 not so lodged. (Act 1856, s. 125, and notes, *postea*.)

Penalty for retention.

575. The trustee is amenable to the Lord Ordinary and Sheriff, at the instance of any party interested, to account for his intromissions and management, by petition served on him. (Ibid. s. 86.)

Petition for an accounting.

Notwithstanding exoneration under composition contract.

576. Notwithstanding the discharge of the bankrupt on a composition, and the consequent exoneration and discharge of the trustee, both he and his cautioners are liable to account for his intromissions and other acts as trustee. (Ibid., s. 142.)

Petition to be served.

Hearing.

Judgment.

577. Where any petition or complaint is presented against the trustee, the Lord Ordinary or Sheriff appoints service and hears parties *viva voce*, and in pronouncing his judgment he must assign his reasons. (Ibid.. s. 169, and notes, *postea*.)

Ordinary procedure.

578. The trustee, when sued for implement or damages, is always liable to the ordinary law procedure applicable to the cause of action.

Letters of horning.

579. And where the claim is so constituted by writ as to admit of letters of horning, they may be raised upon his bond. (Ibid., s. 72, note *c*, *postea*.)

SECT. 5.—OF JUDICIAL FACTOR.

(1.) *Appointment.*

APPOINTMENT OF JUDICIAL FACTOR.

Court makes appointment, &c.

Recall.

580. It is competent for the Court to which a petition for sequestration is presented to take immediate measures for the preservation of the estate, either by the appointment of a judicial factor, or by such other proceedings as may be requisite; and such interim appointments or proceedings fall to be carried into immediate effect; but if the same have been made or ordered by the Sheriff, they may be recalled by the Court of Session, on appeal taken in terms of s. 170 of the Act. (Ibid., s. 16.) As to intimation of same, *vide* s. 16, note *c*.

(2.) *Discharge of Factor.*

DISCHARGE OF JUDICIAL FACTOR.

On ap-

581. The judicial factor vacates his office on the confirmation of a trustee on the estate; and on this taking place, he

may apply to the Court from which he received his appointment for his exoneration and discharge, and such Court may grant the application, and at the same time order the clerk to deliver up his bond. (*Esson*, 14th Feb. 1842.) DISCHARGE OF JUDICIAL FACTOR. Appointment of trustee.

(3.) *Evidence of Appointment.*

582. Where any question arises within Scotland as to the appointment, removal, or discharge of the judicial factor, the proper evidence of the fact is the original petition, with the deliverance thereon, or a copy or extract thereof by the Clerk of Court. (2 Dickson on 'Evidence,' p. 629.) EVIDENCE OF JUDICIAL FACTOR'S APPOINTMENT. Within Scotland.

583. Where it arises beyond Scotland, then all deliverances purporting to be signed by the Lord Ordinary or by any of the judges of the Court of Session, or by the Sheriff, as well as all extracts or copies thereof or from the books of the Court of Session or the Sheriff Court purporting to be signed or certified by any clerk of court, or extracts from or copies of registers purporting to be made by the keeper thereof, or extractor, must be judicially noticed by all courts and judges in England, Ireland, and her Majesty's other dominions, and be received as *prima facie* evidence, without the necessity of proving their authenticity or correctness, or the signatures appended, or the official character of the persons signing, and are sufficient warrants for all diligence and execution by law competent. (Act 1856, s. 174.) In rest of her Majesty's dominions.

584. The deliverance may be either printed, or in writing, or partly both. (Ibid., s. 175.) Deliverances in printing or writing.

(4.) *Powers of Judicial Factor.*

585. The factor has all the powers necessary for the preservation of the estate, including the power to recover debts. (Ibid., s. 16.) JUDICIAL FACTOR'S POWERS. To preserve estate.

586. Preservation of the estate includes the prevention of dilapidation, such as the selling of perishable goods, or the carrying on of a work, or the completion of a contract. (Ibid., s. 16, and notes, *postea*.) What preservation includes.

(5.) *Duties of Judicial Factor.*

JUDICIAL FACTOR'S DUTIES.

To preserve estate.

587. The duty of the factor is simply to execute the powers with which he is invested for the preservation of the estate. (Act 1856, s. 16.)

(6.) *Procedure against Factor.*

PROCEDURE AGAINST FACTOR.

Petition for accounting.

588. The judicial factor is amenable to the Lord Ordinary and to the Sheriff, although resident beyond the territory of the Sheriff, at the instance of any party interested, to account for his intromissions and management, by petition served on him; and in case it shall appear that such application ought not to have been made, the judicial factor is entitled to his full expenses, to be either retained out of the funds or recovered from the party complaining, as the Lord Ordinary or Sheriff shall direct. (Ibid., s. 86.)

SECT. 6.—OF THE COMMISSIONERS.

(1.) *Constitution and Termination of Office.*

ELECTION OF COMMISSIONERS, &c.

Creditors elect commissioner.

Sheriff declares election.

Decision final.

Disqualifications.

589. At the meeting for election of a trustee, the creditors present or their mandatories proceed, after the election of the trustee, to elect three commissioners (if there be so many creditors who have claimed), who must be either creditors or mandatories of creditors, and the like proceedings take place in regard to their election as is provided in regard to the election of trustee (except that they are not bound to find security); and the Sheriff decides who are the persons duly elected, and declares their election by a deliverance in the sederunt-book, which decision is final, and entitles them to act without further confirmation, and a majority of them is a quorum; and no person is eligible as a commissioner who is disqualified to be a trustee. (Ibid., s. 75.)

Election of new commissioner.

590. The trustee, in all cases where a commissioner has declined to act, or resigned, or becomes incapacitated, calls a meeting of creditors for the purpose of electing a new commissioner, and such commissioner is elected in manner above mentioned. (Ibid., s. 75.)

591. A majority in value of the creditors assembled at any meeting duly called for that purpose, may remove a commissioner, and may elect another in his place, in manner before directed. (Act 1856, s. 76, and notes.) ELECTION OF COMMISSIONERS, &c.

592. It would appear that any commissioner may resign office. (Ibid., s. 75.) Majority of creditors may remove.

593. The office is vacated by any commissioner who declines to act. (Ibid., s. 75.) Resignation. Declinature.

594. Any supervening legal incapacity will of course disqualify a commissioner from continuing to hold office; and also when the commissioner is not himself a creditor, but the mandatory of a creditor, he loses office on recall of his mandate by written intimation from his constituent to the trustee. (Ibid., s. 75.) Incapacity. Recall of mandate.

595. The death of the commissioner of course vacates his appointment, and it falls on the trustee to call a meeting *ut supra*. (Ibid., s. 75.) Death.

(2.) *Powers of Commissioners.*

596. A majority of commissioners is a quorum. (Ibid., s. 75.) POWERS OF COMMISSIONERS. Quorum.

597. If the trustee shall die, resign, or be removed, or remain at any one time for three months furth of Scotland, any commissioner may apply to the Sheriff for an order to hold a meeting for devolving the estate on the trustee next in succession, or electing a new trustee; and on the Sheriff granting a warrant to that effect, the commissioner must advertise the same in the 'Edinburgh Gazette.' (Ibid., s. 74.) Where trustee three months abroad, &c.

598. The commissioners have right of access to the sederunt-book and accounts kept by the trustee, and also confidential documents. (Ibid., s. 84.) Access to sederunt-book, &c.

599. The commissioners may assemble at any time to ascertain the situation of the estate. (Ibid., s. 85.) May assemble at any time.

600. Any commissioner may make such report as he may think proper to a general meeting of the creditors. (Ibid., s. 85.) May report to meetings.

601. Any commissioner, with notice to the trustee, may at any time call a meeting of the creditors. (Ibid., s. 98.) May call meetings.

602. The commissioners have power, along with the trustee, to fix the upset price of the heritable estate when brought to public sale by trustee. (Ibid., s. 114.) As to fixing upset price of heritable estate.

POWERS OF COMMISSIONERS.

Cannot purchase estate.

Postpone dividends.

Alteration of dividends.

Arbitrations.

603. Commissioners cannot purchase estate at auction. (Act 1856, s. 120.)

604. The commissioners may postpone a dividend till the recurrence of another stated period for making a dividend if it shall appear to them that it ought to be postponed. (Ibid., s. 134.)

605. The commissioners, along with the trustee, may, in cases where the estate consists chiefly of land, and in any other cases where it may be necessary, apply to the Court of Session or Lord Ordinary or Sheriff for alteration in the periods for payment of the dividends. (Ibid., s. 135.)

606. The commissioners may consent to the trustee compounding and transacting, or referring to arbitration any questions which may arise regarding the estate, or any demand or claim thereon. (Ibid., s. 176.)

(3.) *Duties of Commissioners.*

DUTIES OF COMMISSIONERS.

To advise with trustee.

To concur with him in submissions, &c.

To audit his accounts, &c.

To declare sum for division.

607. It is the duty of the commissioners to advise with the trustee in regard to the management, recovery, and realisation of the estate. (Ibid., s. 82.)

608. The commissioners superintend the proceedings of the trustee, concur with him in submissions and transactions, give their advice and assistance relative to the management of the estate, and decide as to paying or postponing payment of a dividend. (Ibid., s. 85.)

609. The commissioners, within fourteen days after the expiration of four months from the date of the sequestration, examine the trustee's accounts, and ascertain whether the trustee has lodged the moneys recovered by him in bank or not; and if he has failed to do so, they debit him with a sum at the rate of £20 on every £100 not so lodged, being not less than £50; and they audit his accounts and settle the amount of his commission, and authorise him to take credit for such commission in his accounts with the estate; and they certify, by a writing under their hands engrossed or copied in the sederunt-book, the balance due to or by the trustee; and they declare whether any and what part of the net produce of the estate, after making a reasonable deduction for future contingencies, shall be divided among the creditors. (Ibid., s. 125.)

610. Within fourteen days after the expiration of eight

months from the above date, the commissioners again examine the trustee's accounts, and audit the same, and perform the other acts and duties incumbent on them in manner above mentioned, and direct a second dividend to be paid if there shall be funds to pay the same. (Act 1856, s. 130.)

Duties of commissioners.

Same procedure for second dividend.

611. The like procedure is followed out as to subsequent dividends at similar intervals of time thereafter, in order that a dividend may be made on the first lawful day after the expiration of every three months from the day of payment of the immediately preceding dividend, until the whole funds of the bankrupt shall be divided. (Ibid., s. 132.)

Also for subsequent dividends.

612. If a dividend is to be postponed, the commissioners authorise the trustee to give a notice to that effect in the next 'Edinburgh Gazette.' (Ibid., s. 134.)

Authorise trustee to notify postponement of dividend.

613. If, on the lapse of twelve months from the date of the deliverance actually awarding sequestration, it shall appear to the trustee and commissioners expedient to sell the heritable or moveable estates not disposed of, and any interest which the creditors have in the outstanding debts and consigned dividends, they fix a day for holding a meeting of the creditors to take the same into consideration. (Ibid., s. 136.)

As to meeting for winding up estate.

614. Before the Lord Ordinary or the Sheriff shall pronounce his deliverance approving of a composition offered by the bankrupt, the commissioners audit the accounts of the trustee, and ascertain the balance due to or by him, and fix the remuneration for his trouble. (Ibid., s. 141.)

Audit trustee's accounts before composition approved of.

(4.) *Liabilities.*

615. The commissioners are liable to censure from the Court of Session or Lord Ordinary. (Ibid., s. 159.)

Liabilities of commissioners.

616. They are liable to removal from office. (Ibid., s. 76 and 159.)

Censure.

617. They are also subject to action of implement—*c.g.*, to concur in granting a conveyance to a purchaser where they had assented to the articles of roup, &c.

Removal.

Implement

618. They are further subject to a process of accounting before the Lord Ordinary or Sheriff for their intromissions and management (ibid., s. 86), and will doubtless be liable in reparation to those interested of any loss sustained through their wrong (*vide* ibid., s. 159).

Accounting.

Reparation.

(5.) *Law Procedure against Commissioners.*

PROCEDURE AGAINST COMMISSIONERS.

Accountant to inquire into complaints and report.

Censure.

Removal.

619. In the event of the commissioners not faithfully performing their duties and duly observing all rules and regulations imposed on them by Statute, Act of Sederunt, or otherwise relative to the performance of those duties, or in the event of any complaint being made to the Accountant in Bankruptcy by any creditor in regard thereto, he inquires into the same, and if not satisfied with the explanation given, he reports thereon to the Lord Ordinary or the Court of Session, who have power to censure such commissioners, or remove them from their office, or otherwise to deal with them as the justice of the case may require. (Act 1856, s. 159.)

Petition for implement.

620. Where any commissioner refuses to concur in executing a deed necessary in the management of the estate, then a petition *ad factum præstandum* to the Court of Session or Sheriff is the competent mode of procedure.

Action of accounting.

621. An action of accounting for intromissions and management may be brought against the commissioners by way of petition. (Ibid., s. 86.)

Costs of process.

622. And in case it shall appear that such application ought not to have been made, the party complained of is entitled to his full expenses, to be either retained out of the funds or recovered from the party complaining, as the Lord Ordinary or the Sheriff shall direct. (Ibid., s. 86.)

Summons of damages.

623. Where reparation of loss from neglect of duty or wrong of any kind is the remedy sought, then a summons of damages may be instituted in a competent court in the ordinary way, as it may be a question whether any remedy can be had under s. 86 and 159 of Act 1856.

SECT. 7.—OF THE LAW AGENT.

(1.) *Nature of Office.*

LAW AGENT.

Appointed by trustee.

624. The trustee's law agent is not a statutory official. He is appointed by the trustee. (*Bailie*, 13th June 1822; *Gourlay*, 15th June 1827.)

(2.) *Rights of Law Agent.*

625. The law agent has a claim against the trustee for his costs; but before payment, the accounts must be submitted for taxation to the auditor of the Court of Session, or to the auditor of the Sheriff Court of the county in which the sequestration was carried on, as may be directed by a general meeting of the creditors. (Act 1856, s. 154.) LAW AGENT. Claim against trustee.

626. The right of the law agent is good against the trustee for the costs, whether he has funds or not. (*Vide* Trustee's Liabilities.) Whether he has funds or not.

627. The law agent's claim for costs of the sequestration is preferable against the estate. (*Vide* s. 57.) Law agent's claim against estate.

628. The law agent has a lien over the documents in his custody; but he has been held bound to part with them to a subsequent trustee under reservation of his lien. (*Paul*, 2d Feb. 1826.) His lien.

629. The law agent has no claim against creditors who have merely lodged oaths and claims, or have been ranked or received payment of dividends, or appeared and voted at meetings of creditors. (Act 1856, s. 57.) No claim against creditors.

(3.) *Powers of Law Agent.*

630. The law agent's powers will depend upon the extent of his instructions: *i. e.*, he may be appointed by the trustee for a special purpose; or he may be appointed his ordinary law agent in the sequestration. Nature of appointment.

631. In the capacity of general law agent of the trustee, he has the power of appearing in all court proceedings on behalf of the trustee, of presenting all applications in his name, and of subscribing the trustee's abbreviate of adjudication. (Ibid., s. 79.) Appear in process, and sign abbreviate.

632. He has not the power to subscribe the Gazette notice of the trustee's election (Act 1856, s. 87, and Schedule F); and it is questionable whether he can subscribe any such notices for the trustee (*vide* s. 98). As to Gazette notices.

(4.) *Duties of Law Agent.*

633. The law agent, not being an official in the sequestration, has no statutory duties. He has merely to discharge the No statutory duties.

LAW AGENT.

ordinary professional duties of—1. Advising the trustee in all necessary matters; 2. Acting as his procurator in court; 3. Preparing legal documents; and, 4. Performing general law business.

(5.) *Liabilities of Law Agent.*

Not liable for trustee.

634. The law agent incurs no liability for the trustee's neglect of duty (*Gourlay*, 15th June 1827). He incurs the ordinary liability of every law agent to his employers for the due discharge of his professional duties.

(6,) *Law Procedure against Law Agent.*

Petition for papers.

635. Where the law agent refuses to give up the papers of the estate, a petition may be raised against him. (*Paul*, 2d Feb. 1826.)

Also for specific moneys.

636. A petition is likewise competent to compel him to give up specific sums—*e.g.*, the proceeds of a poinding and sale, under deduction of expenses. (*Graham*, 20th Feb. 1850.)

General accounting.

637. But a petition for a general accounting is not competent (*Berry*, 12th Feb. 1830). Where an accounting is required, a summons of count and reckoning is necessary; and where reparation is required, it must be by a summons of damages.

SECT. 8.—OF THE CAUTIONER FOR TRUSTEE.

(1.) *Liabilities of Cautioner.*

CAUTIONER FOR TRUSTEE.

Obligations in bond.

638. By the bond, the cautioner is bound and obliged, as cautioner, surety, and full debtor, for and with the trustee, and conjunctly and severally with him, together with his heirs and executors, that the trustee shall faithfully discharge all the duties which by law attach to his office, and fully account for his whole intromissions with the estate, and make payment of any balance due by him to the creditors on the said estate, or trustee elected by them to succeed him. (Act 1856, s. 72, and Schedule C.)

Not freed by neglect of commissioners.

639. Where the cautioner has been sued under his bond at the instance of a subsequent trustee on behalf of the estate, it has occasionally happened that a defence against liability has

been set up upon the ground that the creditors and commissioners on the estate have wrongfully failed to superintend the trustee, and in certain cases this defence was successful. Latterly, however, it has been repelled (Act 1856, s. 72, note *c*, *postea*); but all dubiety on the subject is now at an end, as the bond itself declares that it shall not be in any way affected, nor shall the cautioner be liberated, by any omission, negligence, or want of diligence on the part of the creditors or commissioners on the estate (ibid., s. 72, Schedule C). CAUTIONER FOR TRUSTEE.

640. But where the bankrupt is pursuer, then a defence that he has during the sequestration wrongfully connived at or encouraged the malversation of the trustee, or took benefit thereby is maintainable. (Ibid., s. 62, note *c*, *postea*.) Where bankrupt has connived at trustee's malversations.

(2.) *Law Procedure against Trustee's Cautioner.*

641. Where the proceedings against the cautioner are at the instance of a subsequent trustee, then in the case where there is competent evidence of there being a balance in the trustee's hands—*e.g.*, a minute by the commissioners, with a scheme of division and Gazette notice, by all which the balance was fixed and acknowledged—summary diligence will be granted. (Ibid., s. 72, note *c*.) Grounds for summary diligence.

642. But in other cases a process of constitution requires to be raised in the ordinary way. Process in ordinary cases.

643. Where the proceedings are at the instance of the bankrupt or his cautioner for the composition, then a petition is competent to the Lord Ordinary or Sheriff against the trustee and his cautioner, to account for the trustee's intromissions and other acts as trustee. (Ibid., s. 142 and notes, *postea*.) Bankrupt and his cautioner may sue by petition.

Sect. 9.—Of the Court of Session.

(1.) *Appellate Jurisdiction.* COURT OF SESSION APPELLATE JURISDICTION.

644. Where measures have been taken or ordered by the Sheriff for the preservation of the estate, the Court may recall the same on appeal taken in terms of the Act 1856, s. 16. Recall measures for preservation.

645. Where sequestration has been awarded of the same date against a debtor by the Sheriffs of two or more counties, any one may be brought by appeal at any time before either Where more than one sequestration.

COURT OF SESSION APPELLATE JURISDICTION.

Remit to Sheriff.

Division of the Court of Session or Lord Ordinary on the Bills, and on such appeal the Court of Session or Lord Ordinary remits the sequestration to such Sheriff Court as in the whole circumstances they shall deem expedient. (Act 1856, s. 19.)

Deliverance awarding sequestration.

646. The deliverance awarding sequestration is not subject to review. (Ibid., s. 31, and notes, *postea*.)

Judgment granting or refusing liberation.

647. The judgment of the Sheriff granting or refusing liberation is subject to review by a note of appeal to either Division of the Court of Session, or, during vacation, to the Lord Ordinary, which appeal is heard summarily, and the judgment pronounced thereon is final. (Ibid., s. 46, and notes, *postea*.)

Sheriff's valuation of contingent claim.

648. The judgment of the Sheriff, fixing the value of a contingent claim, is subject to review, and any creditor who has claimed on the estate may appeal, or appear and be heard on any appeal. (Ibid., s. 53, and notes, *postea*.)

His valuation of annuity.

649. The judgment of the Sheriff, fixing the value of an annuity granted by the bankrupt, is subject to review, and any creditor who has claimed on the estate may appeal, or appear and be heard on any appeal. (Ibid., s. 54, and notes, *postea*.)

His declaration of election of trustee.

650. The judgment of the Sheriff, declaring the person or persons elected to be trustee or trustees in succession, is final, and in no case subject to review in any court, or in any manner whatever. (Ibid., s. 71.)

His deliverance confirming.

651. The confirmation of the trustee's election by the Sheriff is final, and not subject to review in any court, or in any manner whatever. (Ibid., s. 73.)

Declaration of election of commissioners.

652. The decision of the Sheriff, declaring the election of commissioners, is final. (Ibid., s. 75.)

Warrants of commitment by Sheriff.

653. Warrants of commitment granted by the Sheriff against the bankrupt, or other persons liable to examination, in consequence of their refusal to be sworn or to answer all lawful questions to the satisfaction of the Sheriff, are not subject to the review of the Court of Session; but the bankrupt, or person imprisoned, may apply to the Lord Ordinary for a recall of the warrant. (Ibid., s. 93, and notes, *postea*.)

Trustee's judgment on claims.

654. Any creditor dissatisfied with the decision of the trustee on any of the claims of the creditors, lodged with the view to a ranking, may appeal, by a short written note, to the Lord Ordinary, or to the Sheriff; but otherwise the decision

of the trustee is final and conclusive so far as regards that dividend. (Act 1856, s. 127, 130, 132, and notes, *postea*.)

COURT OF SESSION APPELLATE JURISDICTION.

655. The commissioners' audit is subject to the review of the Lord Ordinary or Sheriff. (Ibid., s. 141.)

Commissioners' deliverance fixing trustee's remuneration, &c.

656. The resolutions of the creditors at meetings and any deliverance of the trustee or commissioners are appealable to the Lord Ordinary. (Ibid., s. 169, and notes, *postea*.)

Resolutions of creditors.

657. It is competent to bring under the review of the Inner House of the Court of Session, or before the Lord Ordinary in time of vacation, any deliverance of the Sheriff, except where the same is declared not to be subject to review. (Ibid., s. 170, and notes; *vide* s. 71, note *c*.)

Deliverance of trustee and commissioners.

658. Where any judgment of the Lord Ordinary is to be brought under review of the Inner House, the same is done by a reclaiming note in common form, presented within fourteen days from the date of the judgment. (Ibid., s. 171.)

Sheriff's deliverance.

Form of review of Lord Ordinary's judgment.

(2.) *Original Jurisdiction.*

COURT OF SESSION GROUNDS OF JURISDICTION.

659. In order to have jurisdiction over any one to the effect of sequestrating his estates, the Court must have a common-law jurisdiction over him. (Ibid., s. 13.)

Common-law jurisdiction.

660. This jurisdiction may be founded in different ways: 1. By the party establishing a domicile in any part of Scotland; 2. By continuous residence in any one place for forty days; 3. By the ownership of heritage; and, 4. By the ownership of moveables under arrestment *jurisdictionis fundandæ causa*, although this is not free from doubt; but in the two last-mentioned cases, the party must, within a year before the presentation of the petition, have resided or had a place of business in Scotland, or, in the case of a company, then the company must have within such period carried on business in Scotland, and any partner having so resided or had a dwelling-house, or the company must have had a place of business in Scotland. (Ibid., s. 13, and notes, *postea*.)

Domicile.

Residence for forty days.

Ownership of heritage.

Arrestment of moveables.

Other requisites.

(3.) *Functions of the Court, and forms of Procedure.*

COURT OF SESSION FORMS OF PROCEDURE.

661. The Court entertains petitions for sequestration without the concurrence of the debtor, if presented within four months from his notour bankruptcy; and petitions for seques-

COURT OF SESSION FORMS OF PROCEDURE.

tration of the estate of a deceased debtor may be presented at any time after the debtor's death; but the Court cannot award sequestration until the expiration of six months from the debtor's death, unless he was at the time of his death notour bankrupt, or unless his successors concur in the petition or renounce the succession. (Act 1856, s. 15.)

Where petition for sequestration without debtor's consent.

Measures for preservation.

662. On the necessary application being made, the Court may take immediate measures for the preservation of the estate, either by the appointment of a judicial factor, who finds such caution as may be deemed necessary, with the powers necessary for such preservation, including the power to recover debts, or by such other proceedings as may be requisite. (Ibid., s. 16.)

Power to award sequestration.

663. Sequestration may be awarded either by the Court of Session or the Sheriff; and both Courts exercise a great amount of jurisdiction officially conferred by the statutes. But when anything exceptional occurs, it is the Court of Session that falls to be appealed to. (Ibid., s. 18, note *a;* also s. 74, note *j*, and s. 72, note *b*.)

Remit sequestration to Sheriff.

664. The Court of Session or Lord Ordinary remits the sequestration to such Sheriff Court as they shall deem expedient. (Ibid., s. 19.)

If Sheriff has refused to sequestrate, Court of Session may do so.

665. In any case in which the Sheriff has refused to sequestrate, it is competent for the Court of Session to award sequestration notwithstanding such refusal. (Ibid.)

Lord Ordinary orders service.

666. When a petition for sequestration is presented without the consent of the debtor, or for the sequestration of the estate of a debtor who is dead, without the consent of the successor, the Lord Ordinary, when it is presented to him, orders service, and, if desired, grants diligence to recover evidence of the notour bankruptcy, or other facts necessary to be established. (Ibid., s. 26, and notes, *postea.*)

Sequestration of company and partners may be separate or joint.

667. Sequestration may be awarded, in the case of a company, either on the application of the company itself, or on the application of a creditor to the requisite amount, of the estates of the company and partners jointly, or of their estates separately. (Ibid., s. 27, and notes, *postea.*)

Induciæ of citation.

668. The *inducia* of citation, must be not less than six nor more than fourteen days, but when made edictally must be twenty-one days; and the Court directs intimation to be made in the 'Edinburgh Gazette.' (Ibid., s. 28, and notes, *postea.*) As to mode of citation, *vide* s. 28, note *a*.

Gazette notice of diet.

COURT OF SESSION FORMS OF PROCEDURE.

669. When a petition is presented to the Lord Ordinary, he forthwith, if the same is presented by or with the concurrence of the debtor, or, if dead, of his successor, or if the successor shall renounce the succession, awards sequestration; and if the debtor is dead, ordains any successor who has made up a title, or is in possession, to convey the estates to the trustee. (Act 1856, s. 29, and notes, *postea.*)

Sequestration to be awarded if with consent, &c.

670. Where the petition is not with the concurrence of the debtor or his successor, and if the debtor or his successor do not appear and oppose, or if the debtor do not instantly pay the debt in respect of which he was made bankrupt, or produce written evidence of the same being paid or satisfied, and also pay or satisfy, or produce written evidence of the payment or satisfaction of the debt or debts due to the petitioner or to any other creditor appearing and concurring in the petition, the Lord Ordinary awards sequestration. (Ibid., s. 30, and notes, *postea.*) As to consignation, *vide* s. 30, note *g.* As to objections, *vide* s. 30, note *e.* As to who is a successor, *vide* s. 29, note *a.*

Awarding of sequestration without consent.

671. Any debtor or his successors, where the sequestration is without their consent, unless on the application of a mandatory authorised by a deceased debtor, or any creditor, may, within forty days after the date of the deliverance, present a petition to the Lord Ordinary praying for recall; and when sequestration has been awarded of the estate of a deceased debtor, when his successor was edictally cited, it is competent for his successor, or any person having interest, to apply at any time before the publication of the advertisement for payment of the first dividend; and the Lord Ordinary, in these several cases, orders service and publication in the 'Edinburgh Gazette,' and on the expiration of the *inducice* he pronounces judgment. (Ibid., s. 31, and notes.) As to grounds of recall, *vide* s. 30 and 31, and notes.

Where petition for recall within forty days, &c.

672. No other petition for recall is competent, excepting that nine-tenths in number and value of the creditors ranked on the estate may at any time apply for recall. (Ibid., s. 32, and notes, *postea.*)

Where nine-tenths of the creditors apply for recall.

673. In sequestration proceedings any one creditor may be sisted in place of another; and if a debtor die after the petition for sequestration is presented, the proceedings are notwithstanding to be followed out. (Ibid., s. 34, and notes, *postea.*)

Sisting of creditors in law proceedings.

COURT OF SESSION FORMS OF PROCEDURE.

674. Where a resolution has been duly carried to wind up the estate under a deed of arrangement, the Lord Ordinary may hear any party having interest, and grant the necessary sist of the sequestration. (Act 1856, s. 36, and notes, *postea*.)

Sist of sequestration with a view to deed of arrangement.

675. In the event of a sist, the Lord Ordinary may make arrangement for the interim management of the estate. (Ibid., s. 37, and notes, *postea*.)

Interim management.

Where deed of arrangement produced.

676. The creditors may, at any time within the period of such sist, produce a deed of arrangement duly subscribed, and the Lord Ordinary may consider the same and make such intimation thereof as he may think proper, and hear parties having interest, and make any inquiry he may think necessary; and may approve thereof, and declare the sequestration at an end. (Ibid., s. 38, and notes, *postea*.)

Where deed not produced, &c.

677. If such proceedings prove abortive, the sequestration proceeds, and the period of time subsequent to the resolution is not to be reckoned in calculating periods of time prescribed in the Act; and the Lord Ordinary may make all necessary orders for resuming procedure in the sequestration. (Ibid., s. 39, and notes, *postea*.)

Court may grant protection to bankrupt.

678. The Lord Ordinary, when he awards sequestration, may grant to the debtor a warrant of protection until the meeting for election of trustee. (Ibid., s. 44, and notes, *postea*.)

Also liberation from prison.

679. The Court by whom sequestration was awarded may grant warrant for liberating the debtor, if in prison, after such intimation to the incarcerating creditor, and after hearing any objections; and if the application be refused, it is competent for the debtor to make a new application for liberation, with consent of the trustee and commissioners; and the Court may grant the same, and may annex conditions of caution or otherwise to such warrant. (Ibid., s. 45, and notes, *postea*.)

Effect of oaths.

680. In no case do oaths of verity or credulity supersede production of legal evidence, when required in any discussion. (Ibid., s. 58).

Court orders meeting of creditors to elect trustee, &c.

681. The Court, by the deliverance which awards the sequestration, appoints a meeting of the creditors to elect a trustee, and do the other acts provided by the Statute (Ibid., s. 67, and notes, *postea*). The practice is to fix the meeting to be held in a public place (ibid., note *e*).

Authentication of copy trustee's act and warrant.

682. Any of the judges may authenticate a copy of the trustee's act and warrant. (Ibid., s. 73.)

COURT OF SESSION FORMS OF PROCEDURE.

Where removal of trustee applied for by one-fourth of the creditors.

683. One-fourth of the creditors in value may apply to the Lord Ordinary for removal of the trustee, and the Lord Ordinary orders such petition to be served on the trustee, and intimated in the 'Edinburgh Gazette;' and if satisfied that sufficient reason has been shown, he removes the trustee and appoints a meeting of the creditors for devolving the estate on the trustee next in succession, or electing a new trustee. (Act 1856, s. 74, and notes, *postea.*)

Application for special allowance to bankrupt.

684. If it shall at any time be the opinion of the creditors that a special allowance should be made to the bankrupt, and if the Accountant in Bankruptcy shall report in its favour, the Lord Ordinary or Court, on application by the trustee, may award such allowance out of the estate. (Ibid., s. 78.)

Application for trustee's dismissal for retention of moneys in his own hands.

685. In the case of the trustee unduly retaining the moneys of the estate in his own hands, he is dismissed from his office upon petition to the Lord Ordinary or Sheriff by any creditor. (Ibid., s. 83.)

Factor, &c. amenable to Court by petition.

686. The judicial factor, the trustee, and commissioners, are amenable to the Lord Ordinary to account for their intromissions and management, by petition served on them. (Ibid., s. 86.)

Warrant to bring bankrupt from England or Ireland for examination.

687. If the bankrupt be in any part of Great Britain and Ireland other than Scotland, the Lord Ordinary may grant warrant to all judges, magistrates, justices of the peace, and officers of the law, to apprehend and transmit him to the place of his examination, and to enforce the same, which they are required by the Act to do; and if in prison, the Lord Ordinary may grant warrant as aforesaid to magistrates and jailers to deliver him to the officer presenting such warrant. (Ibid., s. 89.)

Application by latent partner of a company for benefit of Act.

688. The Lord Ordinary may dispose of an application by any latent partner of a sequestrated company, to have it found that the omission to acknowledge that he was a partner in due time proceeded from innocent mistake, or ignorance of the proceedings, or reasonable misconception as to his liability as a partner. (Ibid., s. 94.)

Petition by trustee for subsequent acquisitions.

689. The trustee, on coming to the knowledge of the fact of estates having, during the sequestration, been acquired by or descended or reverted to the bankrupt, presents a petition to the Lord Ordinary, who appoints intimation to be made in the 'Edinburgh Gazette;' and no cause being shown to the con-

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trary, may declare such estate to be vested in the trustee. (Act 1856, s. 103, and notes, *postea*.)

Petition to have an estate struck out of sequestration.

690. Any person claiming right to an estate included in the sequestration may present a petition to the Lord Ordinary, praying to have the estate taken out of the sequestration, and the Lord Ordinary orders the trustee to answer within a certain time, and thereafter he disposes of the application. (Ibid., s. 104.)

Petition by trustee to have successor to denude.

691. When sequestration is awarded against the estate of a person after his death, and his successor has made up a title to his heritable estate, the trustee may apply to the Lord Ordinary that such estate be transferred to him, and the Lord Ordinary orders service, and requires the successor to answer within fourteen days; and if, on the expiration of that period, no cause is shown to the contrary, the Lord Ordinary grants the same. (Ibid., s. 106, and notes, *postea*.)

Petition against heritable creditor to account.

692. Where a heritable creditor holding a security over the heritable estate has sold the same, the trustee, or any posterior heritable creditor preferable to him, may, by petition to the Lord Ordinary, compel the said creditor and the purchaser to account for any reversion of the price. (Ibid., s. 112, and notes, *postea*.)

Report of scheme of division among heritable creditors.

693. The trustee's scheme of ranking and division of the claims of the different creditors on the price of the heritable estate sold, is reported by him to the Lord Ordinary or Court of Session, and the judgment thereon is a warrant for payment out of the price against the purchaser of the heritable estate. (Ibid., s. 116.)

Application for payment of preferable claims.

694. The Lord Ordinary or Court, on application by the trustee or any creditor interested, with a report thereon by the Accountant in Bankruptcy, and on cause shown, may grant an interim warrant for payment of preferable claims out of the price of the estate, or to authorise an interim scheme of division out of the price. (Ibid., s. 117.)

Application for acceleration of dividends.

695. When a competent meeting of creditors has passed the necessary resolution, the trustee may apply to the Lord Ordinary for authority to accelerate the dividends; and in doing so he makes the requisite provision for the acceleration of any other matters which he may find it necessary to accelerate. (Ibid., s. 133, and notes, *postea*.)

696. In cases where the sequestrated estate consists chiefly

of land, and in any other cases where it may be necessary, it is competent for the Court or the Lord Ordinary, on an application by the trustee and commissioners, to authorise such alteration in the periods mentioned in the Act for payment of dividends as shall be found most suitable to the circumstances of the case. (Act 1856, s. 135.)

COURT OF SESSION FORMS OF PROCEDURE. — Also for alteration of same.

697. Where an offer of composition has been duly carried, and is reasonable, and the trustee has transmitted the necessary report, with the bond of caution, to the Bill Chamber Clerk, the Lord Ordinary, after hearing objections, pronounces a deliverance approving thereof; and if he shall refuse to sustain the offer or reject the vote of any creditor, he specifies the grounds of refusal or rejection. (Ibid., s. 138, 139, and 145, and notes, *postea*.)

May approve of composition contract.

698. On such deliverance being pronounced, approving of the composition, the bankrupt, or party offering the composition, makes a statutory declaration or oath; and if beyond the jurisdiction of the Lord Ordinary, or is by a lawful cause prevented from appearing, commission may be granted to take such declaration or oath; and the Lord Ordinary, on being satisfied with such oath or declaration, grants the discharge. (Ibid., s. 140, and notes, *postea*.)

May grant discharge.

699. Before the Lord Ordinary shall pronounce the deliverance approving of the composition, the commissioners must audit the accounts of the trustee. (Ibid., s. 141.)

But audit by commissioners must first take place.

700. Notwithstanding the discharge, the bankrupt, the trustee and his cautioner, are liable, on petition to the Lord Ordinary, by the bankrupt or his cautioner for the composition, to account for his intromissions and other acts as trustee. (Ibid., s. 142.)

Trustee and cautioner liable to account.

701. The bankrupt, on receiving the necessary report from the trustee, may, after the meeting held after his examination, petition the Lord Ordinary to be discharged, if every creditor shall concur in the petition; and he may also present such petition on the expiration of six months from sequestration, if a majority in number and four-fifths in value concur in the petition; and on the expiration of twelve months, if a majority in number and two-thirds concur; and on the expiration of eighteen months, if a majority in number and value concur; and also on the expiration of two years, without any consents; and the Lord Ordinary orders the petition to be intimated in

Petition by bankrupt for discharge without composition.

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the 'Edinburgh Gazette,' and to each creditor; and if there be no appearance, the Lord Ordinary pronounces a discharge; but the Lord Ordinary judges of any objections against granting the discharge, and even without objections he may either find the bankrupt entitled to his discharge, or refuse the discharge, or defer the consideration of the same, and may annex such conditions thereto as the justice of the case may require. (Act 1856, s. 146, and notes; *vide* also Act 1860, s. 3, *postea*.)

Granting of discharge.

702. If the bankrupt shall be found entitled to his discharge he makes a statutory declaration or oath; and if beyond the jurisdiction of the Lord Ordinary, or is by lawful cause prevented from coming before him, commission may be granted to take such declaration or oath; and the Lord Ordinary, on being satisfied with such declaration or oath, pronounces a discharge. (Act 1856, s. 147, and notes, *postea*).

May order pension, &c. to be paid to trustee.

703. The Lord Ordinary may order such portion of the pay, half-pay, salary, or emolument, or pension of any bankrupt, as, on communication to the proper authorities, they may consent to in writing, to be paid to the trustee, in order that the same may be applied in payment of the debts of such bankrupt. (Ibid., s. 149.)

Procedure against creditor who has received preferences, &c.

704. The Lord Ordinary may judge in cases of collusive preference granted to creditors in connection with the bankrupt's discharge. (Ibid., s. 150.)

Application to have bankrupt's discharge annulled.

705. If the bankrupt shall have been personally concerned in or cognisant of such transactions, he forfeits all right to a discharge; and the trustee, or any one or more of the creditors, may apply by petition to the Lord Ordinary to have such discharge, if it has been already granted, annulled. (Ibid., s. 151.)

Application for trustee's discharge.

706. After the meeting called to consider as to the trustee's discharge is held, the trustee may apply to the Lord Ordinary, who, on advising the petition with the minutes of the meeting, and hearing any creditor, may pronounce or refuse decree of exoneration and discharge. (Ibid., s. 152, and notes, *postea*.)

Application as to consigned dividends.

707. After the trustee's discharge, any person producing evidence of his right to any unclaimed dividend deposited in bank may apply for authority to receive such dividend; and on the Lord Ordinary being satisfied of the claimant's right, a warrant is granted by him for payment of such dividend. (Ibid., s. 153.)

Removal or censure of trustee for failing to make annual return.

708. Any trustee who shall fail to make the return specified in s. 158 of the Statute 1856 is removeable from his office at the instance of any one creditor or of the accountant, or is subject to such censure as the Lord Ordinary may think suitable, and is to be found liable in expenses. (Act 1856, s. 158.)

Report by accountant on conduct of trustee or commissioners.

709. The accountant may report upon the conduct of trustees and commissioners, or upon any complaint by any creditor thereanent, to the Lord Ordinary or the Court of Session, who, after hearing such trustees or commissioners thereon, and investigating the whole matter, decide, and have power to censure such trustees or commissioners, or remove them from their office, or otherwise to deal with them as the justice of the case may require. (Ibid., s. 159.)

Report by accountant of state of each sequestration.

710. The accountant superintends the annual returns required by the Act from trustees, and frames an annual report to the Court of Session, showing the state of each depending sequestration returned to him, which report may be published in the 'Edinburgh Gazette,' or otherwise as the Court shall direct. (Ibid., s. 160.)

Report by him of disobedience of trustee, &c.

711. The accountant is at all times, when requisite, to report to the Lord Ordinary or either Division of the Court any disobedience by the trustee or commissioners of any requisition or order by him, and generally any matter which he may deem it necessary for the due discharge of his office to bring before the Lord Ordinary or the Court, and it is competent for the Lord Ordinary or the Court to deal summarily with the matter. (Ibid., s. 161.)

Absence of accountant, &c.

712. In case of the illness or temporary absence of the accountant, the Lord President of the Court of Session may authorise any one of the accountant's clerks or other qualified person to discharge the duties of the office for the time. (Ibid., s. 163.)

Trustee in cessio acts under control of accountant and Court.

713. The accountant prepares a list of processes of cessio, and requires from the trustees under the same, at the end of each year, accounts of their intromissions, and reports on the same annually to either Division of the Court, and also brings before the Court any instance of malversation or irregularity in such trustees, whereupon the Court is entitled to inflict on them such censure or punishment as it may deem just. (Ibid., s. 167.)

714. Upon a resolution being duly passed at a meeting of

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creditors, that the bankrupt shall only be entitled to apply for a decree of cessio, the trustee reports such resolution to the Lord Ordinary, who hears parties, if required, and decides whether such resolution shall be confirmed or recalled; and the Court has power to grant such decree in the sequestration. (Act 1856, s. 168.)

Resolution by creditors that bankrupt only to apply for cessio.

715. If any appeal be made to the House of Lords, the sequestration nevertheless proceeds, and the Lord Ordinary makes such orders as may be necessary to regulate the interim possession and management of the estate, and which orders are not subject to appeal. (Ibid., s. 173.)

Appeal to House of Lords.

Bankrupt's letters.

716. The Lord Ordinary, on cause shown, may, as often as necessary, order that, for a period not exceeding three months from the date of the order, all letters addressed to the bankrupt shall be delivered by the Postmaster-General to the Sheriff Clerk or trustee, to be opened in presence of the Sheriff, after written notice to the bankrupt to attend, if within Scotland. (Ibid., s. 179, and notes, *postea*.)

SECT. 10.—OF THE SHERIFF COURT.

(1.) *Appellate Jurisdiction.*

SHERIFF'S APPELLATE JURISDICTION.

717. The judgment of the trustee, fixing the value of a contingent claim, is subject to review; and any creditor who has claimed on the estate may appeal, or appear and be heard on any appeal. (Ibid., s. 53, and notes, *postea*.)

Trustee's valuation of contingent claim.

His valuation of annuity.

718. The judgment of the trustee, fixing the value of an annuity granted by the bankrupt, is subject to review; and any creditor who has claimed on the estate may appeal, or appear and be heard on any appeal. (Ibid., s. 54, and notes, *postea*.)

Trustee's deliverances on claims.

719. Any creditor, dissatisfied with the decision of the trustee on any of the claims of the creditors lodged with the view to a ranking, may appeal by a short written note to the Sheriff before the expiration of fifteen days from the date of the publication in the Gazette of the notice of payment of the dividend. (Ibid., s. 127, 130, and 132, and notes, *postea*.)

Audit by commissioners, &c.

720. The commissioners' audit of the accounts of the trustee is subject to the review of the Sheriff. (Ibid., s. 141.)

721. The resolutions of the creditors at meetings and any deliverance of the trustee or commissioners are appealable to the Sheriff (Act 1856, s. 169). As to extent of his jurisdiction in appeals, *vide* s. 169, note *m*.

SHERIFF'S APPELLATE JURISDICTION.

Resolutions of creditors, &c.

(2.) *Original Jurisdiction of the Sheriff.*

722. In order that a Sheriff Court may have jurisdiction to enable it to award sequestration against any one, there must exist the whole grounds of jurisdiction which entitle the Court of Session to award sequestration. (*Vide supra.*)

SHERIFF'S GROUNDS OF JURISDICTION.

Same grounds as in case of Court of Session.

723. Furthermore, the debtor must have resided or carried on business in the county of the Sheriff for the year preceding the date of the petition if the debtor is living, or, if dead, for the year preceding his death (ibid., s. 18, and notes, *postea*). As to matters of jurisdiction not provided for by Statute, *vide* ibid., s. 18, note *a*.

Additional grounds.

(3.) *Functions of the Sheriff Court, and Forms of Procedure.*

724. The Sheriff entertains petitions for sequestration without the concurrence of the debtor, if presented within four months of the debtor's notour bankruptcy; and petition for sequestration of the estates of a deceased debtor may be presented at any time after the debtor's death; but the Court cannot award sequestration until the expiration of six months from the debtor's death, unless he was at the time of his death notour bankrupt, or unless his successors concur in the petition, or renounce the succession. (Ibid., s. 15.)

SHERIFF COURT FORMS OF PROCEDURE.

Petition for sequestration within four months of notour bankruptcy.

725. The Court may take immediate measures for the preservation of the estate, either by the appointment of a judicial factor, who shall find such caution as may be deemed necessary, with the powers necessary for such preservation, including the power to recover debts, or by such other proceedings as may be requisite. (Ibid., s. 16.)

When debtor dead.

Measures for preservation of estate.

726. The Sheriff has power to cause to be sealed up, and put under safe custody, the books and papers of the bankrupt, and to lock up his shop, warehouse, or other repositories, and to keep the keys thereof till a trustee is elected and confirmed. (Ibid., s. 17.)

Securing of bankrupt's premises, &c.

727. Sequestration may be awarded by the Sheriff of any

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county in which the debtor has resided or carried on business for the year preceding his death, if deceased, or for the year preceding the date of the petition, if alive. (Act 1856, s. 18; Act 1857, s. 2.)

Sheriff has power to award sequestration.

728. When sequestration has been awarded against a debtor by the Sheriffs of two counties, the later sequestration or sequestrations fall to be remitted to the Sheriff of such county. (Act 1856, s. 19, and notes, *postea*.)

Remit of sequestrations.

Each Sheriff takes measures for preserving estate within his jurisdiction.

729. In the case of more sequestrations against a debtor than one, each Sheriff may take such measures in the meantime as may be necessary for preserving the estate within his jurisdiction; but no other orders given by any Sheriff, and no proceedings in pursuance thereof, excepting orders given by the Sheriff before whom the sequestration comes to depend, are of any force after an appeal under s. 19 of the Act 1856, or of sequestration by the Court of Session. (Ibid., s. 20.)

Warrant for citation, &c., where petition for sequestration without debtor's consent.

730. When a petition for sequestration is presented without the consent of the debtor, or for the sequestration of the estate of a debtor who is dead, without the consent of the successor, the Sheriff, if desired, grants diligence to recover evidence of the notour bankruptcy, or other facts necessary to be established. (Ibid., s. 26, and notes, *postea*.)

Sequestration of estates of company and partners may be jointly or separately.

731. Sequestration may be awarded, in the case of a company, either on the application of the company itself, or on the application of a creditor to the requisite amount, of the estates of the company and partners jointly, or of their estates separately. (Ibid., s. 27, and notes, *postea*.)

Inducie of citation.

Gazette notice.

732. The inducie of citation must be not less than six nor more than fourteen days, but, when made edictally, must be twenty-one days; and the Sheriff directs intimation to be made in the 'Edinburgh Gazette' (ibid., s. 28, and notes, *postea*). As to mode of citation, *vide* s. 28, note *a*.

Awarding of sequestration when with debtor's consent.

733. When a petition is presented to the Sheriff, he forthwith, if the same is presented by or with the concurrence of the debtor, or, if dead, of his successor, or if the successor shall renounce the succession, awards sequestration; and if the debtor is dead, ordains any successor who has made up a title or is in possession to convey the estate to the trustee (ibid., s. 29, and notes, *postea*). As to who is a successor, *vide* s. 29, note *a*.

734. Where the petition is not with the concurrence of the

debtor, or his successor, and if the debtor, or his successor, do not appear and oppose, or if the debtor do not instantly pay the debt in respect of which he was made bankrupt, or produce written evidence of the same being paid or satisfied, and also pay or satisfy, or produce written evidence of the payment or satisfaction of the debt or debts due to the petitioner, or to any other creditor appearing and concurring in the petition, the Sheriff awards sequestration (Act 1856, s. 30, and notes, *postea*). As to objections to sequestration, *vide* s. 30, note *e*, *postea*. As to consignation, *vide* s. 30, note *g*, *postea*.

Sheriff Court forms of procedure.

Where without consent.

735. In sequestration proceedings one creditor may be sisted in place of another; and if a debtor die after the petition for sequestration is presented, the proceedings notwithstanding are followed out. (Ibid., s. 34, and notes, *postea*.)

Sisting of creditors in law proceedings.

If debtor dies, sequestration goes on.

736. Where a resolution has been duly carried to wind up the estate under a deed of arrangement, the Sheriff may hear any party having interest, and may grant the necessary sist in the sequestration. (Ibid., s. 36, and notes, *postea*.)

Report of resolution to carry through deed of arrangement.

737. In the event of a sist, the Sheriff may make arrangement for the interim management of the estate. (Ibid., s. 37, and notes, *postea*.)

Interim management.

738. The creditors may, at any time within the period of such sist, produce a deed of arrangement, duly subscribed; and the Sheriff may consider the same, and make such intimation thereof as he may think proper, and hear parties having interest, and make any inquiry he may think necessary; and he may approve thereof, and declare the sequestration at an end. (Ibid., s. 38, and notes, *postea*.)

Production of deed of arrangement.

739. If the proceedings prove abortive, the sequestration proceeds, and the period of time subsequent to the resolution is not reckoned in calculating periods of time prescribed in the Act; and the Sheriff may make all necessary orders for resuming procedure in the sequestration. (Ibid., s. 39, and notes, *postea*.)

If deed of arrangement not produced, &c., sequestration proceeds.

740. The Sheriff, when awarding sequestration, may grant to the debtor protection until the meeting for the election of trustee. (Ibid., s. 44, and notes, *postea*.)

741. Where protection has been voted to the bankrupt by the creditors, the trustee applies to the Sheriff, who grants the protection. (Ibid., s. 44, and notes, *postea*.)

Application for personal protection.

742. The Court by whom sequestration was awarded may

SHERIFF COURT FORMS OF PROCEDURE.

Liberation of bankrupt.

grant warrant for liberating the debtor, if in prison, after such intimation to the incarcerating creditor, and after hearing objections; and if the application be refused, it is competent for the debtor to make a new application for liberation, with consent of the trustee and commissioners, and the Court may grant the same, and may annex conditions of caution or otherwise. (Act 1856, s. 45, and notes, *postea*.)

Correction of oaths.

743. When it shall appear to the Sheriff that the oath or claim of any creditor is not properly framed, the Sheriff may call for a rectification of the same, pointing out wherein it is defective; but it is not incumbent upon the Sheriff to give the creditor an opportunity to rectify his oath and claim as aforesaid. (Ibid., s. 51, and notes, *postea*.)

Application to have a contingent claim valued.

744. When the claim of a creditor depends upon a contingency, he may apply to the Sheriff, if the trustee has not been elected, to put a value on such debt. (Ibid., s. 53, and notes, *postea*.)

Application for valuation of an annuity.

745. A creditor in respect of an annuity may, if the trustee has not been elected, apply to the Sheriff to put a value on such annuity. (Ibid., s. 54.)

Effect of oaths.

746. In no case do oaths of verity or credulity supersede production of legal evidence when required in any discussion. (Ibid., s. 58.)

Appointment of meeting for election of trustee.

747. The Sheriff, by the deliverance awarding sequestration, appoints a meeting of the creditors to elect a trustee, and do the other acts provided by the Statute (ibid., s. 67). The practice is, to fix the meeting to be held in a public place (ibid., s. 67, note *e*, *postea*).

Attendance of Sheriff at meeting.

748. If two or more creditors shall give notice to the Sheriff, such Sheriff attends and presides at the meeting and adjourned meeting for the election of trustee, and he directs the writing of the minutes, and signs the same. (Ibid., s. 68, and notes, *postea*.)

Procedure where Sheriff present.

749. If the Sheriff be present at the election of trustee he by a deliverance on the minutes, declares the person chosen by the creditors to be trustee; but if there be competition, or objections to the candidate or candidates, such objections to the votes or candidates must be stated at the meeting, and the Sheriff may either forthwith decide thereon, or make avizandum; and he, if necessary, makes a short note of the objections and of the answers, on which he, within four days after the

meeting, hears parties *viva voce*, and declares the election, and states the grounds of his decision in a note. (Act 1856, s 69, and notes, *postea*.) SHERIFF COURT FORMS OF PROCEDURE.

750. Where the Sheriff is not present, then the preses reports the proceedings to the Sheriff, and if there be no competition or objection, he declares the election; but if there be competition or objection, he hears parties, and gives his decision. (Ibid., s. 70.) Where not present.

751. The judgment of the Sheriff is to be given with the least possible delay. (Ibid., s. 71.) Judgment to be given without delay.

752. On the decision being given, and on a bond by the trustee and his cautioner being duly lodged, the Sheriff confirms his election as trustee. (Ibid., s. 73.) Confirmation of election of trustee.

753. If the trustee shall die, resign, or be removed or remain at any one time for three months furth of Scotland, a commissioner or creditor may apply to the Sheriff for an order to hold a meeting for devolving the estate on the trustee next in succession, or electing a new trustee. (Ibid., s. 74, and notes, *postea*.) Application for order to hold meeting for election of new trustee, &c.

754. The Sheriff decides who are the persons duly elected as commissioners, and declares their election by a deliverance in the sederunt-book. (Ibid., s. 75.) Declaration of election of commissioners.

755. Where the creditors have duly voted to the bankrupt a renewal of his personal protection, the trustee applies to the Sheriff, who renews the same. (Ibid., s. 77.) Application for renewal of protection.

756. The bankrupt must give every information and assistance necessary to enable the trustee to execute his duty; and if the bankrupt fail to do so, or to grant any deed which may be requisite for the recovery or disposal of his estate, the trustee may apply to the Sheriff to compel him. (Ibid., s. 81.) Application to compel bankrupt to execute deeds, &c.

757. In the case of the trustee unduly retaining the moneys of the estate in his own hands, then the trustee falls to be dismissed from his office, upon petition to the Sheriff by any creditor. (Ibid., s. 83.) Dismissal of trustee for retention of moneys.

758. The judicial factor, the trustee, and commissioners are amenable to the Sheriff, to account for their intromissions and management, by petition served on them. (Ibid., s. 86.) Petition against factor, &c. for accounting.

759. On the trustee's application, the Sheriff names a day for the public examination of the bankrupt, and the Sheriff Sheriff fixes day of bankrupt's examination, &c.

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issues his warrant for the bankrupt to attend within the Sheriff Court House. (Act 1856, s. 87.)

Apprehension of bankrupt for examination, &c.

760. The Sheriff may grant a warrant to apprehend the bankrupt, and bring him up for examination, even from the sanctuary; and if the bankrupt be in prison for debt the Sheriff may grant warrant to magistrates and jailers, to deliver him to the officer presenting the same; but in certain cases the Sheriff may grant commission to take the examination; and the Sheriff or commissioner may, if he see cause, adjourn the examination of the bankrupt to an early day, to be then fixed; and the Sheriff may, on the application of the trustee, order the bankrupt to be examined as often as he shall see fit. (Ibid., s. 88.)

Examination of third parties.

761. The Sheriff may, on the application of the trustee, order an examination of the bankrupt's wife and family, clerks, servants, factors, law agents, and others, who can give information relative to his estate, on oath; and if they refuse or neglect to appear, when duly summoned, the Sheriff may issue another warrant to apprehend the person so failing to appear; but if such person is not the bankrupt, nor his wife, nor one of his family, nor his clerk or servant, no warrant for apprehension can be issued until the expiration of eight days from the service of the first warrant, unless the trustee shall, on oath, specify a reasonable cause of belief that such person intends to leave the country to avoid the examination, in which case the Sheriff may forthwith issue such warrant; and if the person liable to be examined cannot attend, the Sheriff may grant commission to take his examination; and such examination, whether by the Sheriff or by a commissioner, may be adjourned to an early day, to be then fixed. (Ibid., s. 90, and notes, *postea*.)

Bankrupt and others must answer all lawful questions.

762. The Sheriff may order such persons to produce for inspection any books of account, papers, deeds, writings, or other documents in their custody relative to the bankrupt's affairs, and cause the same, or copies thereof, to be delivered to the trustee. (Ibid., s. 91, and notes, *postea*.)

Mode of examination.

763. These examinations are taken upon oath, and, except where a commission is granted, take place before the Sheriff; and the bankrupt's examination is taken and may be written or dictated by the Sheriff, and authenticated in the ordinary way as a regular deposition; but notes of the evidence of such

other persons are written by the Sheriff in the mode prescribed by the Sheriff Court Act, 16 & 17 Vict. c. 80, except where it shall appear to him necessary to record and authenticate such evidence, in whole or in part, in the form of a regular deposition; and if the trustee make an application to that effect, the bankrupt and such other persons are examined in open court. (Act 1856, s. 92, and notes, *postea*.) Sheriff Court forms of procedure.

764. If the bankrupt or others refuse to be sworn, or to answer, to the satisfaction of the Sheriff, any lawful question put to him by the Sheriff or trustee, or by any creditor with the sanction of the Sheriff, or without lawful cause refuse to sign his examination, or to produce books, deeds, or other documents in his custody or power relating to the estate, the Sheriff may commit them to prison. (Ibid., s. 93, and notes, *postea*.) Warrant of commitment for refusal.

765. The Sheriff disposes of an application by any latent partner of a sequestrated company to have it found that the omission to acknowledge that he was a partner in due time proceeded from innocent mistake, or ignorance of the proceedings, or reasonable misconception as to his liability as a partner. (Ibid., s. 94.) Application by latent partner of a company.

766. The Sheriff subscribes along with the bankrupt the state of the bankrupt's affairs, with such additions and alterations thereon as he may have made before the close of his examination (ibid., s. 95). As to form of oath, *vide* ibid., s. 95. Oath by bankrupt.

767. Where a heritable creditor, holding a security over the heritable estate, has sold the same, the trustee or any posterior heritable creditor preferable to him may by petition to the Sheriff, compel the said creditor and the purchaser to account for any reversion of the price. (Ibid., s. 112, and notes, *postea*.) Petition for accounting against heritable creditor.

768. When a competent meeting of creditors has passed the necessary resolution, the trustee applies to the Sheriff for authority to accelerate the dividends; and in doing so, he makes the requisite provision for other matters which he may find it necessary to accelerate. (Ibid., s. 133, and notes, *postea*.) Petition for acceleration of dividends.

769. In cases where the sequestrated estate consists chiefly of land, and in other cases where it may be necessary, it is competent for the Sheriff, on a special application by the Special application for alteration of dividends.

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trustee and commissioners, to authorise such alteration in the periods mentioned in the Act for payment of dividends as shall be found most suitable to the circumstances of the case. (Act 1856, s. 135.)

Approval of composition contract.

770. Where an offer of composition has been duly carried, and is reasonable, and the trustee has transmitted the necessary report, with the bond of caution, to the Sheriff Clerk, the Sheriff, after hearing objections, pronounces a deliverance approving thereof; and if he shall refuse to sustain the offer, or reject the vote of any creditor, he specifies the grounds of refusal or rejection. (Ibid., s. 138, 139, and 145, and notes, *postea*.)

Declaration by bankrupt.

771. On a deliverance being pronounced, approving of the composition, the bankrupt or other party offering the composition, makes a statutory declaration or oath, and if beyond the jurisdiction of the Sheriff, or is by a lawful cause prevented from appearing before him, commission may be granted to take such declaration or oath; and the Sheriff, on being satisfied with such oath or declaration, grants the discharge. (Ibid., s. 140, and notes, *postea*.)

Discharge.

Commissioners audit the trustee's accounts prior to discharge.

772. Before the Sheriff shall pronounce the deliverance approving of the composition, the commissioners audit the accounts of the trustee. (Ibid., s. 141.)

Trustee and cautioner liable to accounting, notwithstanding exoneration.

773. Notwithstanding the discharge, the bankrupt, the trustee, and his cautioner are liable, on petition to the Sheriff by the bankrupt or his cautioner for the composition, to account for his intromissions and other acts as trustee. (Ibid., s. 142.)

Petition by bankrupt for discharge without composition.

774. The bankrupt, on receiving the necessary report from the trustee may, after the meeting held after his examination, petition the Sheriff for his discharge, if every creditor concur in the petition; and he may present such petition on the expiration of six months from the sequestration, if a majority in number and four-fifths in value concur; and on the expiration of twelve months, if a majority in number and two-thirds concur; and on the expiration of eighteen months, if a majority in number and value concur; and also on the expiration of two years without any consents; and the Sheriff orders the petition to be intimated in the 'Edinburgh Gazette,' and to each creditor; and if there be no appearance to oppose the same, the Sheriff pronounces a discharge; but he judges of any objections,

and either finds the bankrupt entitled to his discharge, or refuses the discharge, or defers the consideration of the same, and may annex such conditions thereto as the justice of the case may require; and may refuse the application, although two years have elapsed from the date of the sequestration, and although there be no opposition, if it appear from the report of the Accountant in Bankruptcy, or other evidence, that the bankrupt has fraudulently concealed any part of his estate or has wilfully failed to comply with any of the provisions of the Act. (Act 1856, s. 146, and notes, *postea;* also Act 1860, s. 3.)

SHERIFF COURT FORMS OF PROCEDURE.

775. If the bankrupt shall be found entitled to his discharge, he makes a statutory declaration or oath, and if beyond the jurisdiction of the Sheriff, or is by lawful cause prevented from coming before the Sheriff, commission may be granted to take such declaration or oath; and the Sheriff, on being satisfied with such declaration or oath, pronounces a discharge. (Act 1856, s. 147, and notes, *postea.*)

Oath by bankrupt, and discharge by Sheriff.

776. The Sheriff may order such portion of the pay, half-pay, salary, emolument, or pension of any bankrupt, as, on communication to the proper authorities, they may consent to in writing, to be paid to the trustee, in order that the same may be applied in payment of the debts of such bankrupt. (Ibid., s. 149.)

Order as to pension, &c., being paid to trustee.

777. The Sheriff may judge in cases of collusive preferences granted to creditors in connection with the bankrupt's discharge. (Ibid., s. 150.)

Proceedings in the case of preferences, &c.

778. After the meeting called to consider as to an application for the trustee's discharge is held, the trustee may apply to the Sheriff, who, on advising the petition with the minutes of the meeting, and hearing any creditor, may pronounce or refuse decree and discharge. (Ibid., s. 152, and notes, *postea.*)

Application for trustee's discharge.

779. Upon a resolution being duly passed at a meeting of creditors, that the bankrupt shall only be entitled to apply for a decree of cessio, the trustee, reports such resolution to the Sheriff, who hears parties, if required, and decides whether such resolution shall be confirmed or recalled; and the Sheriff has power to grant such decree in the sequestration. (Ibid. s. 168.)

Report of resolution by creditors that bankrupt only to apply for decree of cessio.

780. During the dependence of appeals or petitions and complaints, it is competent to the Sheriff to give such orders

Regulation of interim possession, &c.

SHERIFF COURT FORMS OF PROCEDURE.

as may be necessary to regulate the interim possession and administration of the estate. (Act 1856, s. 172.)

Order as to bankrupt's letters.

781. The Sheriff, on cause shown, may as often as necessary order that for a period not exceeding three months from the date of the order all letters addressed to the bankrupt shall be delivered by the Postmaster-General to the Sheriff Clerk or trustee, to be opened in presence of the Sheriff, after written notice to the bankrupt to attend, if within Scotland (ibid., s. 179, and notes, *postea*). As to style of writs, *vide* s. 18, note *a*.

SECT. 11.—OF THE ACCOUNTANT IN BANKRUPTCY.

(1.) *Appointment.*

ACCOUNTANT IN BANKRUPTCY.

Appointment. Qualification.

782. The Crown appoints a person versant in law and accounts, to be called "The Accountant in Bankruptcy," for performing the duties of that office; and he must hold no other office appointed to by Government, and cannot be engaged in practice before the Supreme or any inferior Court; nor have any management of or intromission with any money of any bankrupt estate, or constituting the fund in any process of sequestration. (Ibid., s. 156, *postea*.)

Temporary appointment in case of illness, &c.

783. In case of the illness or temporary absence of the accountant, the Lord President of the Court of Session may authorise any one of the accountant's clerks, or other qualified person, to discharge the duties of the office for the time. (Ibid. s. 163.)

(2.) *Functions of Accountant.*

His concurrence in a sale of heritable estate by private bargain.

784. The accountant may concur in a sale by private bargain of the heritable estate, and in fixing the terms and conditions of sale regarding price or otherwise. (Ibid., s. 115.)

Extract of bankrupt's discharge to be preserved by him, &c.

785. An extract of the deliverance discharging the bankrupt, signed by the Clerk of the Bills or the Sheriff Clerk, on being transmitted to the accountant, is preserved by him with the copy of the proceedings in the sequestration transmitted to him, and an entry thereof is made by the accountant in the Register of Sequestrations (Ibid., s. 140, 145, and 147.)

786. An extract of the decree of discharge in favour of the

trustee, on being transmitted to the accountant, is entered by him in the Register of Sequestrations. (Act 1856, s. 152.)

ACCOUNTANT IN BANKRUPTCY.

787. Every trustee, before his discharge, transmits the sederunt-book to the accountant, who directs the trustee to deposit the unclaimed dividends in the bank; and a book or books must be kept in the office of the accountant to be entitled "The Register of Unclaimed Dividends," containing a list of the creditors entitled to such unclaimed dividends, and in what bank deposited, which is patent to all persons, and the deposit-receipts for such unclaimed dividends must be transmitted to the accountant; and on a warrant being granted by the Lord Ordinary for payment of any such unclaimed dividend, the accountant makes an entry in the said register. (Ibid., s. 153.)

Entry of trustee's discharge.

To direct trustee to consign unclaimed dividends, &c.

788. The accountant keeps a book, entitled "The Register of Sequestrations," in the general form of Schedule (G) annexed to the Act, but with such additional heads as he may find necessary, which book is patent to all concerned. (Ibid., s. 157.)

To keep register of sequestrations, &c.

789. The Sheriff Clerk transmits annually to the accountant a return of all the sequestrations depending in the sheriffdom whereof he is clerk; and the accountant causes the returns so made to be regularly bound up and preserved, according to the alphabetical order of counties, in a volume to be kept at all times in his office, with an index thereto, framed by him, and which volume is patent to all concerned. (Ibid., s. 158.)

To preserve annual returns, &c.

790. The accountant takes cognisance of the conduct of all trustees and commissioners in sequestrations awarded after the passing of the Act 1856, or in which any proceedings shall have been had within five years thereof. (Ibid., s. 159.)

To take cognisance of trustee, &c.

791. The accountant superintends the annual returns required from trustees, and frames an annual report to the Court of Session showing the state of each depending sequestration returned to him; and the accountant has power, on the application of one or more of the creditors, or of his own accord, to require exhibition of the sederunt-book in any sequestration, and of any vouchers or documents which he may think necessary, and to direct that a meeting of the creditors shall be called to take any measures under consideration which he may judge requisite for the preservation or due management of the

To superintend sequestrations.

Accountant in Bankruptcy.

estate, or more speedy realising and division of the funds or winding up of the estate. (Act 1856, s. 160.)

To report disobedience of trustee, &c.

792. The accountant at all times, when requisite, reports to the Lord Ordinary or the Court any disobedience by the trustee or commissioners of any requisition or order by him, and generally any matter which he may deem it necessary for the due discharge of his office to bring before the Lord Ordinary or the Court. (Ibid., s. 161.)

To give information to Lord Advocate.

793. If the accountant shall possess information that leads him to suspect fraudulent conduct by the bankrupt, or misconduct on the part of the trustee or commissioners, such as may infer punishment, he is entitled to give information to her Majesty's Advocate. (Ibid., s. 162.)

Sect. 12.—Of the Bill Chamber Clerk.

Bill Chamber Clerk.

794. In sequestrations awarded in the Court of Session and remitted to the Sheriff, the process of sequestration is held to be in the Bill Chamber of the Court of Session, and the Clerks of the Bill Chamber are clerks to such sequestrations. (Ibid., s. 43.)

Clerks to sequestrations in Court of Session.

Transmission of certified copy of petition, &c.

795. On a remit of a sequestration awarded in the Court of Session being made to the Sheriff, the Bill Chamber Clerk certifies a copy of the petition for sequestration and of the first deliverance, and also (where it is different) of the deliverance awarding sequestration, for transmission by the petitioner to the Sheriff Clerk of the county to the Sheriff of which the sequestration is remitted. (Ibid., s. 43.)

Recording of bond for composition.

796. The bond of caution for the composition falls to be recorded in the books of the Court of Session when the deliverance discharging the bankrupt is pronounced by the Lord Ordinary; and an extract of such deliverance, and also, in the case of a deliverance being pronounced by the Lord Ordinary discharging the bankrupt without composition, an extract of such deliverance is made and signed by the Clerk of the Bills for transmission to the accountant, and the Clerk of the Bills issues an abbreviate of such deliverance in the form of Schedule (A) annexed to "The Bankruptcy and Real Securities Act, 1857." (Ibid., s. 145 and 147; Act 1857, s. 7.)

Extract of discharge on composition.

Abbreviates issued.

Extract of trustee's

797. An extract of the decree of exoneration and discharge

in favour of the trustee, signed by the Clerk of the Bills, when the decree has been given by the Lord Ordinary, must forthwith be transmitted to the accountant. (Act 1856, s. 152.)

BILL CHAMBER CLERK.

discharge to be sent to accountant.

SECT. 13.—OF THE SHERIFF CLERK.

SHERIFF CLERK.

798. The Sheriff Clerk of each county is clerk to the sequestrations awarded by the Sheriff of that county. (Ibid. s. 43.)

Sheriff Clerk of each county is clerk to sequestrations within it.

799. In all sequestrations the Sheriff Clerk of the Sheriff Court has power to act in his office under the Statute. (Ibid., s. 43.)

Power to act in sequestrations.

800. If two or more creditors shall give notice to the Sheriff of the county, such Sheriff attends the meeting for election of trustee and adjourned meetings, and presides; and the Sheriff Clerk or his depute also attends and marks the oaths and productions with his initials, and writes the minutes in the presence of the meeting, and enters therein the names and designations of the creditors present, or of the mandatories of creditors, and the amount for which they claim, and any other circumstances which the presiding Sheriff shall judge fit, which minutes the presiding Sheriff signs; and the Clerk retains the oaths of the several claimants, subject to the exhibition thereof in his hands, till the election shall be determined, when he delivers the same to the trustee. (Ibid., s. 68.)

Duties at election of trustee.

801. After the meeting for election of trustee, the oaths of the several claimants, if the Sheriff Clerk or his depute be present, remain in his possession, or, if he be not present, are transmitted to the Sheriff Clerk by the preses, to be retained by him till the trustee be finally appointed, when he delivers the same to the trustee. (Ibid., s. 70.)

Custody of oaths after meeting for election of trustee.

802. The bond of caution for the trustee must be in the form of Schedule (C) annexed to the Act, and is furnished to him by the Sheriff Clerk. (Ibid., s. 72.)

Bond of caution for trustee.

803. Upon the confirmation of the trustee's election, the Sheriff Clerk issues an act and warrant in the form of Schedule (D) annexed to the Act, to the trustee. The Sheriff Clerk also issues a copy of the same when required. (Ibid., s. 73.)

Trustee's act and warrant.

804. The same procedure as above takes place on the devolution of the office on the succeeding trustee, or on the election of a new trustee. (Ibid., s. 74.)

Procedure on devolution or election of new trustee.

SHERIFF CLERK.

Recording of bond for composition.

Extract of discharge on composition.

Abbreviates to be issued.

805. The bond of caution for the composition falls to be recorded in the books of the Sheriff Court, when the deliverance discharging the bankrupt is pronounced by the Sheriff; and an extract of such deliverance, and also, in the case of a deliverance being pronounced by the Lord Ordinary discharging the bankrupt without composition, an extract of such deliverance, is made and signed by the Sheriff Clerk for transmission to the accountant; and the Sheriff Clerk also issues abbreviates of all such deliverances in the form of Schedule (A) annexed to "The Bankruptcy and Real Securities (Scotland) Act, 1857." (Act 1856, s. 145 and 147; Act 1857, s. 7.)

Extract of discharge without composition.

806. When a deliverance discharging the bankrupt without composition is pronounced by the Sheriff, an extract of the same is made and signed by the Sheriff Clerk for transmission to the accountant. (Act 1856, s. 147.)

Extract of trustee's discharge.

807. An extract of the decree of exoneration and discharge in favour of the trustee, signed by the Sheriff Clerk when the decree has been given by the Sheriff, is to be forthwith transmitted to the accountant, and the bond of caution for the trustee delivered up. (Ibid., s. 152.)

Annual return to accountant.

808. Each trustee, within fourteen days after the thirty-first day of October in each year, or on the first lawful day after the expiry of the said fourteen days, delivers, free of expense, to the Sheriff Clerk of the county, a return in the form of Schedule (H) hereunto annexed, of every sequestration in which he is trustee; and the Sheriff Clerk, within fourteen days thereafter, transmits, in the form of the said schedule, to the accountant, a return of all the sequestrations depending in the sheriffdom whereof he is clerk. (Ibid., s. 158.)

SECT. 14.—OF THE OFFICERS OF COURT.

OFFICERS OF COURT.

Power to act in their offices.

Citation under petition for sequestration.

809. In all sequestrations, messengers-at-arms and officers of the Sheriff Court have power to act in their respective offices under the Statute. (Ibid., s. 43.)

810. In applications for sequestration without consent, the officers of court, in terms of the warrant, cite the debtor, or, if dead, his successor, to appear within a specified period, if he be within Scotland, by delivering to him personally, or by leaving at his dwelling-house or place of business, or the

dwelling-house or place of business last occupied by him, a copy of the petition and warrant and if the debtor or his successor be furth of Scotland, they cite him to appear within a specified period by leaving such copy at the Office of Edictal Citations, at the dwelling-house or place of business last occupied by him, and if the debtor be dead, also at the dwelling-house or place of business occupied by him at his death, to show cause why sequestration should not be awarded. (Act 1856, s. 26.) Officers of Court

811. When the debtor is a company, it is a sufficient citation that a copy of the petition and warrant be left at the place where the business of the company is or was last carried on, provided a partner or a clerk or a servant of the company be there, and failing thereof at the dwelling-house of any of the acting partners, and if the house of such partner cannot be found, by leaving a copy at the Office of Edictal Citations. (Ibid., s. 27.) Where debtor is a company.

812. The induciæ of citation, when made personally or at a dwelling-house or place of business, must be not less than six nor more than fourteen days, and when made edictally must be twenty-one days. (Ibid., s. 28.) Induciæ.

813. The Sheriff's warrant is sufficient authority, either within or beyond the territory of the Sheriff in Scotland, to messengers-at-arms, and to the officers of the Sheriff, to apprehend, transmit, detain, and imprison, and to jailers to deliver up, receive, and detain the bankrupt, until his examination is concluded, and also for his retransmission after examination to the jail from which he was delivered up, and reimprisonment therein. (Ibid., s. 88.) Apprehension of bankrupt for examination, &c.

814. If the bankrupt be in any part of Great Britain and Ireland other than Scotland, the Lord Ordinary may, on petition by the trustee, grant warrant to all judges, magistrates, justices of the peace, and officers of the law, to apprehend and transmit him to the place of his examination, and to enforce the same, which they are by the Act required to do; and if the bankrupt be in prison or custody, the Lord Ordinary may grant warrant as aforesaid to magistrates and jailers, upon receiving a duplicate of such warrant, and an acknowledgment for the person of the bankrupt, to deliver him to the messenger or officer presenting such warrant, which they must do accord- Where bankrupt is out of Scotland.

Officers of Court.

ingly; and such warrant is sufficient authority for the apprehension, transmission, detention, and imprisonment of the bankrupt (when necessary for his safe custody), and for his retransmission after examination to and reimprisonment in the prison or custody from which he was delivered up. (Act 1856, s. 89.)

Warrant for apprehension of third parties for examination.

815. All warrants granted by the Sheriff to cite or apprehend the bankrupt or others with a view to examination are sufficient to authorise messengers-at-arms, or the officers of the Sheriff, to execute the same, either within or without the territory of the Sheriff in Scotland. (Ibid., s. 90.)

Warrants for diligence.

816. All deliverances under the Act 1856 purporting to be signed by the Lord Ordinary or by any of the Judges of the Court of Session, or by the Sheriff, as well as all extracts or copies thereof or from the books of the Court of Session or the Sheriff Court purporting to be signed or certified by any Clerk of Court, or extracts from or copies of registers purporting to be made by the keeper thereof, or extractor, are sufficient warrants for all diligence and execution by law competent. (Ibid., s. 174.)

Executions in printing or writing.

817. All executions under the Act may be either printed or in writing, or partly both. (Ibid., s. 175.)

Citation without witnesses.

818. Service or citation may be made by a competent officer without witnesses. (Ibid.)

Sect. 15.—International Law.

International law.

Foreign law.

819. In regard to the case of foreign countries, the international rule is that the bankruptcy laws of one country will not be put in force if the debtor's estates are being administered under a regular process of bankruptcy in another country. (Ibid., s. 29, note *b*; also s. 31, note *g*.)

Law in British dominions.

820. In the case of the British dominions, it is enacted that British Courts are to be auxiliary to each other in the exercise of their respective jurisdictions in matters of bankruptcy. (English Bankruptcy Act 1869, s. 73, &c.)

Special provisions as to Scotch sequestrations.

821. There are furthermore special provisions in the Scotch Statute, such as with reference to the vesting in a Scotch trustee of estates in other dominions of her Majesty than

Scotland (Act 1856, s. 102); as to bringing a bankrupt from any other part of the United Kingdom than Scotland (s. 89); as to evidence of judicial writs and warrants from Scotland in other parts of the British dominions (s. 174); and also as to the cancelling of sequestrations in Scotland where the majority of the bankrupt's creditors are resident in England or Ireland. (Bankruptcy [Scotland] Amendment Act, 1860, s. 1.)

INTERNATIONAL LAW.

CHAPTER VII.

WINDING UP OF INCORPORATED COMPANIES.

(1.) *How far subject to Ordinary Laws of Insolvency and Bankruptcy.*

Subject to laws.

822. Incorporated companies are subject to the ordinary laws of insolvency and bankruptcy (*vide* par. 160, *antea*); but companies incorporated under the Act 1862 are likewise

Process of winding up by Act.

subject to the processes of winding up provided by that Statute (s. 79 and 129). As to unregistered companies, *vide* s. 199.

Trust-deeds invalid.

823. Such companies, however, cannot grant trust-deeds for the benefit of creditors (s. 164).

Sequestration incompetent.

824. And where such a company is being wound up by the Court—being the Court of Session in either Division (s. 81)—or subject to the supervision of the Court, its estates are not subject to sequestration nor any form of execution (s. 163).

Preferences void.

825. Undue or fraudulent preferences to creditors are invalid in the same way as if granted by an individual trader; and for this purpose it is an act of bankruptcy where there is the presentation of a petition for winding up the company by

Act of bankruptcy.

the Court or under the supervision of the Court, or a resolution of the company has been come to for a voluntary winding up (s. 164.)

(2.) *Winding up by the Court.*

Winding up by Court.

826. A company under the Act may be wound up by the Court whenever it is unable to pay its debts (s. 79); and it is

Requisites.

deemed to be so—1. whenever a creditor for a sum exceeding

£50 then due has served on the company a demand under his hand for payment, and the company has for three weeks neglected to satisfy it; or, 2. whenever the *inducice* of a charge for payment on an extract decree or an extract registered bond, or an extract registered protest, have expired without payment being made; or, 3. whenever it is proved to the satisfaction of the Court that the company is unable to pay its debts (s. 80). The winding up of the company dates from the time of the presentation of a petition for winding up (s. 84). Winding up by Court. — Demand for £50. Expiry of charge. Commencement of winding up.

827. And no disposition of property or transfers of shares, or alteration in the status of members, between the above date and the date of the order for winding up, are valid, unless otherwise ordered by the Court (s. 153). Dispositions thereafter invalid.

828. Upon proof to the satisfaction of the Court that the proceedings for winding up ought to be stayed, the Court, upon the application of a creditor or contributory to that effect, may do so (s. 89). Stay of winding up.

829. When the affairs of the company are completely wound up, the Court shall make an order dissolving the company (s. 111), which shall be duly registered (s. 112 and 113). Termination of winding up.

830. There are several legal effects that result from winding up by the Court: 1. The Court may restrain all legal proceedings against the company before making an order for winding up (s. 85). 2. After an order has been made for winding up, no legal proceedings can be proceeded with or commenced against the company except with leave of Court, and subject to such terms as the Court may impose (s. 87). 3. No sequestration or execution of any kind can be instituted (s. 103). 4. The presentation of the petition is an act of bankruptcy (s. 164). Effects of winding up on law proceedings.

831. The procedure for winding up by the Court commences by petition presented by the company, or by a creditor or contributory (s. 82), which may be granted, or the hearing adjourned, or it may be dismissed (s. 86), and afterwards the proceedings may be stayed altogether or for a limited time (s. 89). Procedure for winding up.

832. At any time after the presentation of the petition the Court may appoint provisionally an official liquidator (s. 85). Provisional liquidator.

833. For the purpose of conducting the proceedings in

WINDING UP BY COURT.

winding up a company and assisting the Court therein, the Court appoints an official liquidator or official liquidators (s. 92 and 152).

Appointment of official liquidators. Removal, &c.

834. The official liquidator may resign or be removed by the Court, and any vacancy shall be filled by the Court (s. 93).

Powers.

835. The powers of the official liquidator are, with the sanction of the Court, as follows: 1. He conducts law proceedings on behalf of the company. 2. He carries on the business so far as necessary for beneficial winding up. 3. He sells the estate publicly or privately. 4. He executes all necessary deeds, and uses the company's seal. 5. He ranks on insolvent and bankrupt estates. 6. He signs bills and raises money on the assets of the company. 7. He administers the estates of deceased contributories. 8. He does everything necessary for winding up the affairs of the company, and distributes its assets (s. 95). It may be stated that while the official liquidator exercises all these powers with the sanction of the Court, it may be provided by an order that he shall exercise any of them without the intervention of the Court. 9. He also, with the sanction of the Court, pays the creditors their claims, or compromises with them, as also compromises with the contributories (s. 159 and 160). 10. He has the powers of a trustee on a bankrupt estate (s. 171). 11. He may appoint a law agent to assist him in the performance of his duties (s. 97).

Duties.

836. The official liquidator describes himself by the style of official liquidator, and not by his individual name; and he takes into his custody or under his control all the property to which the company is or appears to be entitled; and he performs such duties in reference to the winding up as may be imposed by the Court (s. 94). Furthermore, when the company's affairs are wound up and the company dissolved, he reports the order of dissolution to the Registrar under a penalty (s. 112 and 113).

Remuneration.

837. There falls to be paid to the official liquidator such salary or remuneration, by way of percentage or otherwise, as the Court may direct (s. 93).

Powers of Court.

838. The powers of the Court are as follows—viz.: 1. It deals with the petition for winding up in the way it deems just (s. 86). 2. It restrains and controls proceedings against the

company (s. 85 and 87). 3. It may appoint a provisional liquidator (s. 85). 4. It may appoint the payment of unpaid capital where the company is limited by guarantee (s. 90). 5. It appoints and removes liquidators, prescribes their duties, and sanctions the exercise of their powers (s. 92, 93, 94, 95, 96, and 97). 6. It settles the list of contributories (s. 98 and 99), requires them to deliver to the official liquidator all documents, cash, and effects in their hands to which the company is *primâ facie* entitled (s. 100), and directs the mode of settlement of moneys due to the company by contributories (s. 101). 7. It makes and directs calls upon the contributories (s. 102, 103, 104, and 105). 8. It fixes the time for creditors to prove their claims (s. 107). 9. It adjusts the rights of contributories (s. 109). 10. It orders payment of costs out of assets (s. 110). 11. It dissolves the company (s. 111). 12. It summons persons to appear before it suspected of having property belonging to the company, or of being capable of giving information anent the company's affairs, and it may also direct such persons to produce documents (s. 115 and 117). 13. It may cause a contributory to be arrested upon proof given that there is probable cause for believing that he intends to quit the United Kingdom, or to remove or conceal his effects, and may likewise direct his papers and effects to be seized (s. 118). 14. And all these special powers are in addition to the ordinary powers of the Court in instituting proceedings against contributories and debtors (s. 119). 15. It may direct the examination in Scotland of persons for the time being there anent the affairs of the company or the affairs of a contributory, and may grant commission to the Sheriff (s. 127). 16. It may direct to be adopted, in a winding up by the Court, any proceedings that have been taken in the course of a voluntary winding up (s. 146). 17. It may order the books and papers of the company to be open to the inspection of creditors and contributories (s. 156). 18. Finally, it may make Acts of Sederunt concerning the mode of winding up (s. 171). WINDING UP BY COURT.

839. It is enjoined upon the Court to take judicial notice of the signatures of the officers of other courts exercising jurisdiction under the Act, and of the seals of these courts (s. 125), and also of the seal, stamp, or signature of any court or judge attached to any affidavit or declaration sworn or Duties.

WINDING UP BY COURT.

made under the Act (s. 128.) It is also enjoined upon the Court, in winding up a company, to have regard to the wishes of creditors or contributories (s. 91).

Enforcement of orders.

840. The Court may enforce its orders by granting decree against contributories, and no suspension thereof is competent except on caution or consignation, unless by leave of the Court (s. 121); and the courts of the three kingdoms are directed to enforce each other's orders in their respective jurisdictions (s. 122 and 123).

Appeals.

841. Appeals may be taken against orders or decisions in the winding up of the affairs of the company, as in cases within the ordinary jurisdiction of the Court (s. 124).

(3.) *Voluntary Winding up.*

VOLUNTARY WINDING UP.

842. The voluntary winding up of a company is no bar to its being wound up by the Court, if the Court is of opinion that a voluntary winding up is prejudicial to creditors (s. 145); and in doing so the Court may adopt all or any of the proceedings taken in the voluntary winding up (s. 146).

No bar to winding up by Court.

843. The requisites for a voluntary winding up are the passing by the company of a special resolution requiring the company to be wound up voluntarily, or an extraordinary resolution that it has been proved to its satisfaction that the company cannot, by reason of its liabilities, continue its business, and that it is advisable to wind up the same (s. 129).

Requisites.

Gazette notice.

844. Notice of the resolution must be given in the 'Edinburgh Gazette' (s. 132).

Commencement of winding up.

845. The commencement of a voluntary winding up is the time of the passing of the resolution (s. 130).

846. There are two legal effects of a voluntary winding up to be noticed: 1. That while the corporate state and powers of the company continue until it is wound up, it ceases to carry on business except so far as may be required for beneficial winding up; and all transfers of shares, except those made to or with the sanction of the liquidators, or alteration in the status of the members, are void (s. 131). 2. The resolution for a voluntary winding up is an act of bankruptcy (s. 164).

Effects.

847. The company in general meeting shall appoint a liquidator or liquidators (s. 133); or by extraordinary resolu-

tion may delegate the power of appointment and of supplying vacancies to its creditors or any committee of its creditors (s. 135). And if from any cause there is no liquidator acting, the Court may appoint (s. 141). VOLUNTARY WINDING UP. Liquidators, their appointment.

848. If any vacancy in the office of liquidator occurs, the company in general meeting may supply the vacancy (s. 140). Vacancy.

849. The Court, on due cause shown, may remove a liquidator (s. 141). Removal.

850. The powers of the liquidators in a voluntary winding up are as follows: 1. They exercise their powers, if more than one appointed, as may be determined at the time of their appointment, or, in default of any determination, by any number not less than two. 2. The liquidators, without the sanction of the Court, exercise all powers given by the Act to the official liquidator. 3. They settle the list of contributories. 4. They make calls. 5. They pay the debts of the company, and adjust the rights of contributories amongst themselves (s. 133). 6. They ask the assistance of the Court in the discharge of their functions (s. 138). 7. They call meetings of the company (s. 139). 8. They may, with the sanction of an extraordinary resolution, pay any classes of creditors in full, or compromise with them (s. 159), and likewise compromise with contributories (s. 160). 9. The liquidators may also, with the sanction of a special resolution of the company, make arrangements for the transfer of the business to another company (s. 161 and 162). Powers.

851. The duties of the liquidator are those imposed upon him by his appointment (s. 133 and 150). There are also two statutory duties to be discharged: 1. As soon as the winding up is concluded, he makes up his accounts and calls a meeting of the company (s. 142). 2. He makes a return to the Registrar of the meeting, and of the date on which it was held (s. 143). Duties.

852. The company in general meeting may fix the remuneration to be paid to the liquidator or liquidators (s. 133). Remuneration.

853. The Court in a voluntary winding up, or the Lord Ordinary on the Bills in vacation, may, on the application of the liquidators or a contributory, determine any question in the matter of winding up, and may exercise, as respects Court.

VOLUNTARY WINDING UP.

the enforcing of calls or any other matters, all or any of the powers which they might exercise if the company were wound up by the Court (s. 138).

(4.) *Winding up under Supervision of Court.*

WINDING UP UNDER SUPERVISION.

Requisites.

854. When a resolution has been passed by a company to wind up voluntarily, the Court may, on application by creditors or contributories, direct the winding up to continue, but subject to the supervision of the Court (s. 147 and 148).

Effects.

855. Where a company is wound up under the supervision of the Court, these legal effects ensue: 1. Between the commencement of the winding up and the order for winding up, no dispositions of property, transfers of shares, or alterations in the status of members are valid (s. 153). 2. No sequestration or execution of any kind can be instituted (s. 163). 3. The Court may restrain actions against the company before making the order (s. 85, 148, and 151). 4. After the order no legal proceedings can be raised or carried on against the company, except with leave of the Court (s. 87, 148 and 151). 5. The presentation of the petition is an act of bankruptcy (s. 164).

Court.

856. 1. A petition, praying wholly or in part, that a voluntary winding up should continue, but subject to supervision, gives the Court entire jurisdiction in the winding up, so that it can accede to the petition or direct the company to be wound up altogether by the Court (s. 147, 148, 149, and 151). 2. The Court may, when an order has been made to wind up under the supervision of the Court, supersede it by an order for a compulsory winding up (s. 152). 3. The Court may impose terms and conditions, as it thinks just, upon the winding up (s. 147). 4. The Court may have regard to the wishes of creditors and contributories in determining as to winding up (s. 149). 5. The Court may appoint any additional liquidator or liquidators (s. 150). 6. The Court may also make and enforce calls, and generally exercise all the powers which it might have exercised if it had been a winding up by the Court (s. 151). 7. Finally, it may direct the company's books and papers to be subject to the inspection of creditors and contributories (s. 156).

857. The Court appoints additional liquidators, and may

remove them, and supply any vacancy occasioned by removal, death, or resignations (s. 150). WINDING UP UNDER SUPERVISION.

858. The liquidators so appointed by the Court have the same powers, and are subject to the same obligations, and in all respects stand in the same position as if they had been appointed by the company (s. 150). They exercise their powers without the sanction or intervention of the Court, but subject to any restrictions imposed by the Court (s. 151). They may also, with the sanction of the Court, make compromises with creditors or contributories (s. 159 and 160). Appointment and removal. Powers and duties.

(5.) *Contributories.*

859. A contributory is one bound to contribute to the assets of the company in the event of the same being wound up (s. 74); and in the event of death, his representatives take his place (s. 76 and 77). CONTRIBUTORIES. Who are.

860. In the event of bankruptcy, the claims for calls against the contributory is admitted to proof against the estate (s. 77), and an estimated value falls to be put upon his liability to future calls (s. 75). Bankruptcy.

861. If a female contributory marries either before or after being placed on the list, her husband, during the continuation of the marriage, is liable (s. 78). Female contributory.

862. The adjustment of the rights of contributories is provided to be done by the Court in a compulsory winding up (s. 109), and by the liquidators in cases of either voluntary winding up (s. 133), or winding up subject to the supervision of the Court (s. 151). Rights of contributories—how adjusted.

863. A contributory may petition for winding up (s. 82, 147, and 148), if there are less then seven members, or if he is an original shareholder, or if he has held his shares for six months, or have had them devolved upon him through the death of a former holder (Companies Act 1867, s. 40). He may petition for restraint of actions against company (Act 1862, s. 85) for stay of winding up altogether (s. 89). He may also apply for inspection of the company's books (s. 156); and in cases of meetings ordered by the Court for ascertaining the wishes of the contributories, he exercises the number of votes conferred upon him by the regulations of the company (s. 91). Powers.

CONTRIBUTORIES.
Liabilities.

864. By the Act, the liabilities of the contributories are as follows: 1. They pay up in the case of a company limited by guarantee and having a capital divided into shares, any capital that may not have been called up (s. 90). 2. They hand over to the official liquidator all property or documents which may happen to be in their custody, and to which the company is *primâ facie* entitled (s. 100). 3. They make payment of any moneys due by them to the company (s. 101). 4. They are also subject to calls (s. 102, 133, and 151).

Procedure against contributories.

865. The proceedings authorised by the Act against contributories are these: The Court settles a list, and distinguishes between contributories in their own right and those liable for others (s. 98 and 99), and makes an order on the contributories to hand over property or documents, pay moneys due or calls made (s. 100, 101, 102, and 103). Proceedings may be taken to secure payment out of the estates of deceased contributories by administering their estates (s. 106). And any order of Court (subject to appeal) is conclusive evidence as to its contents, except as against real estate (s. 106). The Court may order the examination of contributories and production of documents (s. 127); and on proof given that there is probable cause for believing that a contributory is about to quit the United Kingdom, or otherwise abscond, or remove, or conceal any of his goods, or avoid examination, may cause him to be arrested, and his books and goods secured (s. 118). And those proceedings are in addition to the ordinary law procedure (s. 119), and are carried into execution by decrees, in common form, against which there can be no suspension except on caution or consignation or leave of the Court (s. 121); but they are subject to appeal as in cases within the ordinary jurisdiction of the Court (s. 124).

(6.) *Creditors.*

CREDITORS.
Rights.

866. The creditors have no right to the estates of the company vested in them by the Act—the estates being held to be in the custody of the Court (s. 92), or the liquidators (s. 94 and 133), for payment of the company's debts (s. 159), under deduction of expenses (s. 110 and 144), and finally for distribution among those concerned (s. 95, 109, and 123). It is incumbent on the creditors to prove their claims (s.

107), and if their claims are future or contingent, or only claims of damages, an estimated value is put upon them (s. 158). CREDITORS.

867. The powers of the creditors are as follows: They may apply for winding up by the Court (s. 82), or for winding up under supervision of the Court (s. 147 and 148), or for superseding a voluntary winding up by an order for a compulsory one (s. 145). They may also apply to have a compulsory winding up stayed (s. 89), and for access to the books and papers of the company (s. 156), and they may hold meetings in regard to the winding up, whether by the Court or under its supervision, if directed by the Court. And they vote in such cases according to the value of their debts (s. 91 and 149). Their powers of suing, however, are subject to restraint by the Court after the presentation of a petition for winding up (s. 85), and they cannot be exercised at all except with leave of the Court, after an order for winding up has been made (s. 87), and in these cases, it is the same whether it is a winding up by the Court or under its supervision (s. 148 and 151). This restraint upon creditors does not, however, apply in the case of a voluntary winding up (s. 138, and note). Powers.

(7.) *Company.*

868. In the event of a winding up of a company, no matter whether compulsory, or voluntary, or under supervision, the company does not fall to be dissolved until its affairs are finally wound up (s. 111 and 131). COMPANY. Status.

869. The powers of the company, where the winding up is by the Court, are extremely limited. It may apply for the winding up (s. 82) and for restraint upon the proceedings of creditors (s. 85). But in the case of a voluntary winding up its powers are more extensive. It continues to carry on business, but only so far as required for the beneficial winding up thereof (s. 131), and it not only resolves upon the winding up (s. 129), but appoints liquidators (s. 133), and supplies vacancies (s. 140), or delegates the appointment to the creditors s. 135), makes arrangements with its creditors (s. 136), and generally controls the winding up from first to last (s. 139 and 142). Powers.

(8.) *Officials.*

OFFICIALS.

Repayment by delinquents and damages.

870. If any past or present director, manager, official, or other liquidator, or other officer of the company has been found, in the course of winding up of any company, to have misapplied or retained moneys of the company, or been guilty of any breach of trust, the Court may examine into the matter and compel repayment with interest, or to make compensation (s. 165).

Falsification of books.

871. If a director, officer, or contributory destroys, mutilates, alters, or falsifies documents, or makes or is privy to the making of false entries in documents, with intent to defraud or deceive, he is subject to imprisonment, with or without hard labour, for a term not exceeding two years (s. 166).

Prosecutions at expense of estate.

872. Where in a winding up by the Court or under supervision, it appears that a past or present director, manager, officer, or member of the company has been guilty of a criminal offence, the Court may direct the liquidators to institute and conduct a prosecution at the expense of the estate (s. 167); and where such appears to the liquidators in voluntary winding up, then they may, with the previous sanction of the Court, prosecute the offender at the expense of the estate (s. 168).

PART II.

STATUTES ON INSOLVENCY AND BANKRUPTCY.

WITH NOTES.

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STATUTES ON INSOLVENCY & BANKRUPTCY.

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ACT 1621, c. 18.

A Ratification of the Act of the Lords of Council and Session, made in Julie 1620, *against unlawful Dispositions and Alienations made by Dyvours and Bankrupts.*

Our Soveraigne Lord, with advice and consent of the Estates, conveened in this present Parliament, ratifies, approves, and for His Highnesse and his successours, perpetually confirmes the Act of the Lords of Council and Session made against Dyvours and Banckrupts, at Edinburgh the 12 daye of Julie 1620, and ordaines the same to have, and take full effect and execution, as a necessarie and profitable law, for the weale of all His Highnesse subjects; of the which Act the tenour followeth:—

The Lords of Council and Session understanding, by the grievous and just complaints of many of His Majesties good subjects, that the fraude, malice, and falshood of a number of dyvours and bankrupts is become so frequent and avowed, and hath already taken such progresse, to the overthrow of many honest men's fortunes and estates, that it is likely to dissolve trust, commerce, and faithful dealing amongst subjects: Whereupon must ensue the ruine of the whole estate, if the godlesse deceites of those be not prevented and remedied; who by their apparent wealth in lands and goods, and by their showe of conscience, credite, and honestie, drawing into their

hands upon trust the money, merchandize, and goods of well-meaning and credulous persons, doe no wayes intend to repay the same: but either to live ryotously by wasting other men's substance; or to enrich themselves by that subtil stealth of true men's goods, and to withdraw themselves and their goods foorth of this realme, to elude all execution of justice: and to that effect, and in manifest defraud of their creditors, do make simulate and fraudful alienations, dispositions, and other securities, of their lands, reversions, teyndes, goods, actions, debtes, and others belonging unto them, to their wives, children, kinsmen, alleyes, and other confident and interposed persons, without any true, lawful, or necessarie cause, and without any just or true price interveening in their saids bargains, whereby their just creditors and cautioners are falsly and godlesly defrauded of all payment of their just debts, and many honest families likely to come to utter ruine.

For remeed whereof, the saids Lordes, according to the power given unto them by His Majestie, and his most noble progenitors, to set downe orders for administration of justice, meaning to follow and practice the good and commendable lawes, civil and canon, made against fraudful alienations, in prejudice of creditors, and against the authors and partakers of such fraude; Statutes, ordaines, and declares, that in all actions and causes depending, or to be intended by any true creditor (*a*) for recovery of his just debt, or satisfaction of his lawful action and right; they (*b*) will decreete and decerne, all alienationes (*c*), dispositions, assignations, and translations whatsoever, made by the debtor (*d*), of any of his landes, teindes, reversions, actions, debtes, or goods whatsoever, to any conjunct or confident person (*e*) without true, just, and necessarie causes, and without a just price really payed (*f*), the same beeing done after the contracting of lawful debtes from true creditors (*g*): to have beene from the beginning, and to be in all times comming, null, and of none availe, force nor effect, at the instance of the true and just creditor, by way of action (*h*), exception (*i*), or reply; without further declarator (*j*). And in case any of His Majestie's good subjectes (nowayes partakers of the saids fraudes) (*k*) have lawfully purchased any of the saids bankrupte's landes or goods, by true bargaines, for just and competent pryces, or in satisfaction of their lawful debts, from the interposed persons, trusted by the saids dyvours. In that case, the right lawfully acquired by him who is nowayes partaker of the fraude, shall not be annulled in manner foresaid (*l*). But the receiver of the pryce of the saids lands, goods, and others, from the buyer, shall be holden and oblished to making the same forthcomming to the behoove of the bank-

rupte's trew creditors, in payment of their lawful debts. And it shall be sufficient probation (*m*) of the fraud (*n*) intended against the creditors, if they, or any of them, shall be able to verifie by writte, or by oath, of the party receiver (*o*) of any security from the dyvour or bankrupt, that the same was made without any true, just, and necessarie cause, or without any true and competent price: or that the landes and goods of the dyvour and bankrupt being sold by him who bought them from the said dyvour, the whole or the most part of the price thereof was converted or to be converted to the bankrupte's profite and use. Providing alwayes, that so much of the saids landes and goods or prices thereof so trusted by bankrupts to interposed persons, as hath beene really payed or assigned by them to any of the bankrupte's lawfull creditors, shall be allowed unto them, they making the rest forthcomming to the remanent creditors who want their due payments. And if, in time comming, any of the saids dyvours (*p*), or their interposed partakers of their fraude, shall make any voluntarie (*q*) payment (*r*) or right (*s*) to any person in defraude (*t*) of the lawful and more timely (*u*) diligence (*v*) of another creditor, having served inhibition (*w*), or used horning, arreastment, comprizing, or other lawful meane (*y*), duely to affect the dyvour's lands, or goods, or price thereof to his behoove. In that case the said dyvour, or interposed person, shall be holden to make the same forthcomming to the creditor having used his first lawful diligence, who shall likewise bee preferred to the con-creditor who, being posterior unto him in diligence, hath obtained payment by the partiall favour of the debtor or of his interposed confident, and shall have good action to recover from the said creditor that which was voluntarily payed in defraude of the persuer's diligence.

Finaly, the Lordes declares all such bankrupts, and dyvours, and all interposed persons for covering or executing their frauds, and all others who shall give counsel and wilfull assistance unto the saids bankrupts in the divising and practising of their saids fraudes and godlesse deceits, to the prejudice of their true creditors, shall be reputed and holden dishonest, false, and infamous persons, incapable of all honours, dignities, benefices, and offices, or to passe upon inqueistes, or assyses, or to beare witnesse in judgement, or out-with in any times comming.

NOTES ON BRANCH I.

(*a*) 1. The creditor must be a creditor *prior* to the date of the alienation under challenge. (*Edmond*, 1st June 1853; *M'Cowan*, 6th July 1852; *Mansfield*, 13th Feb. 1833; S. 1. 9. 15; E. 4. 1. 30; 2 B. C. 184.)

2. The trustee under a sequestration now reduces for behoof of all the creditors, and has the benefit of all presumptions under the Act (1856, s. 11, *postea*), but still he must represent prior creditors, *vide* cases, *supra*.

3. As to date of the challenging creditor's debt, and the date of the alienation, *vide* 2 B. C. 184 and 185; E. 4. 1. 30.

4. A conditional or gratuitous creditor may reduce (E. 4. 1. 28); also a first disponee may reduce a subsequent conveyance (E. 4. 1. 29; *vide* 2 B. C. 185).

(*b*) 1. The Sheriff has now jurisdiction in such cases. (Act 1857, s. 9, *postea*.)

2. The form of action in the court may be that of reduction, but in the Sheriff Court it must be a petitory action to set aside the alienation. (Act 1856, s. 10, note *c*.)

(*c*) 1. Deeds of all sorts, conveyances, alienations, contracts, obligations, bills, discharges—whatever may confer on the grantee property belonging to the debtor, or enable him to claim as a creditor in competition with the true creditors of the granter, or save him from a demand for payment of what he owes to the debtor—are subject to challenge under this Act. (2 B. C. 186.)

2. Discharge of a debt reduced. (*Laing*, 18th Jan. 1832.)

3. A promissory note reducible. (*Thomas*, 10th July 1865.)

4. Also a trust-disposition. (*M'Kenzie*, 26th May 1868.)

(*d*) 1. The Act is directed against the frauds of dyvours or bankrupts. "A bankrupt, in the meaning of this Act, is one who has no visible fund for the payment of his creditors, over and above the special subject alienated to their prejudice" (E. 4. 1. 28). Hence it is essential to a reduction that the debtor be insolvent at the date of the action.

2. It is of no consequence whether the deed is granted directly by the debtor or through the instrumentality of a third party. (2 B. C. 186.)

(*e*) 1. An issue disallowed where not averred that alienation granted to a conjunct or confident person. (*Wilson*, 20th Dec. 1853.)

2. "Conjunct" includes all such near relationship by blood or affinity as would preclude a party from sitting as judge in the granter's cause—*e.g.*, that of husband to wife, and of parent and child, brother and sister, and whether by consanguinity or affinity; and of uncle and nephew by consanguinity, but not uncle and nephew by affinity, nor of parties married to sisters, nor of cousins-german. (E. 4. 1. 31; 2 B. C. 187; *M'Gowan*, 24th Feb. 1826.)

3. "Confident" includes such persons as (1) partners; (2) servants; (3) factors; (4) law agents, and all those in whom uncommon trust is reposed (E. 4. 1. 31; 2 B. C. 187; *Edmond*, 1st June 1853). But though a factor is confident, a constituent is not (*Buccleugh*, Dec. 1728, D. 12573). Held that a party who had acted as the debtor's tutor, curator, or trustee, and who was paternal uncle to the debtor (though illegitimate) is conjunct and confident (*Laing*, 18th Jan. 1832).

(*f*) 1. These words, construed with the rest of the Statute, and as interpreted by decisions, mean that the cause of granting the deed must be (1) *onerous*, or (2) *compulsory—i.e.*, that there must be a fair price (2 B. C. 192) or adequate consideration (2 B. C. 189) given for it, or that it must be granted in consequence of a prior obligation (*Grant*, 10th Nov. 1748, D. 952).

2. *Onerous or True and Just Causes.*—(1) An alienation to a cautioner in relief is onerous (*Ross*, 15th June 1830; *Thomas*, 19th Dec. 1866); (2) so

also is a cautionary obligation to any one on behalf of a third party (2 B. C. 188). (3) The receiving by the debtor of a general disposition from his father of his whole property under burden of payment of a sum to a sister is an onerous cause for granting a bond to the sister for the amount (*Mansfield*, 13th Feb. 1833). (4) The cause of granting must not be the result of a *pactum illicitum* (2 B. C. 189). (5) Provisions made to a relation's wife or to their children, if the marriage follows thereupon, are onerous (E. 4. 1. 33); (6) but not where they are made entirely to the relation himself (2 B. C. 188). (7) Provisions made to one's own wife or children before marriage are onerous (E. 4. 1. 33); (8) but will be restricted if exorbitant (2 B. C. 1881; *M'Lachlan*, 29th June 1824, B. P. 1944). (9) Post-nuptial provisions to a wife were at one time considered onerous to the extent of a moderate provision (E. 4. 1. 33); but this law is now doubted, and such provisions are not considered valid to any extent if the husband was insolvent at the time of making them (*Jeffray*, 24th May 1825; *Sharp*, 19th Jan. 1839, B. P. 1942). (10) Post-nuptial provisions to children are gratuitous (E. 4. 1. 34). (11) Where the deed is partly onerous and partly gratuitous, it will be reduced in so far as gratuitous (*Gordon*, 23d Dec. 1679, D. 1012; *Corsan*, 25th June 1751, D. 885).

3. *Necessary or Compulsory Causes.*—(1) An obligation by debtor to grant a particular security as the condition of the receiver becoming bound as cautioner for his (the debtor's) son, and of giving an order for certain money lying in India belonging to him, and which obligation formed part of the original transaction, is a sufficient necessary cause (*Horne*, 12th Feb. 1847). (2) Also any proper legal obligation undertaken during solvency to grant the conveyance under challenge is a necessary cause (2 B. C. 189).

(*g*) 1. *Requisites to be proved.*—It appears that there are the three following requisites to the action: (1) That the debtor be a dyvour or bankrupt—*i. e.*, that he be *insolvent;* (2) That the challenging creditor be a creditor *prior* to the deed under challenge; (3) That the receiver of the alienation be *conjunct or confident* with the debtor. These have, for a couple of centuries, been held as all that the challenger was bound to prove. (1) He was not bound to prove that the alienation was *gratuitous.* That was presumed, and the proof of onerosity was consequently thrown on the receiver (*Riddoch*, 9th March 1639, D. 12554; *Hamilton*, 15th July 1670, D. 12555; *Whitehead*, 29th Nov. 1671, D. 12557; *Stanfield*, 19th Jan. 1676, D. 954; *Napier*, 12th Feb. 1670, D. 3755; *vide* E. 4. 1. 35; 2 B. C. 191). (2) Neither was he bound to prove that the debtor was *insolvent* at the *date* of the *alienation.* That was also presumed, and the proof of solvency was thrown on the receiver (E. 4. 1. 32; 2 B. C. 193; *Creditors of Cult*, 5th Aug. 1783, D. 974; *M'Cowan*, 6th July 1852). Of course the receiver defeated the reduction if he established onerosity (*Grant*, 9th Nov. 1748, D. 951), or solvency at the date of the deed (2 B. C. 193; *Clerk*, 30th June 1675, D. 917; *Creditors of Mousewell*, 6th Jan. 1677, D. 919. Although these are the rules now recognised as to the *onus* of proof, yet the issue sent to the jury is sometimes very general in its terms. In *Bolden*, 6th March 1863, it was to the effect—Whether the alienation was to a conjunct and confident without true, just, and necessary cause, to the hurt and prejudice of prior creditors, contrary to the Act 1621, c. 18?

2. *Requisites to be averred.*—Although there may be thus a doubt as to what falls to be proved by the pursuer, there is no doubt as to what must be averred. It must be averred, (1) that the debtor *is* bankrupt or insolvent, *vide* note *d*, *supra;* (2) that the pursuer is a *prior* creditor, *vide* note *a*, *supra;* (3) that the receiver is conjunct or confident with the debtor (*Wilson*, 20th Dec. 1853);

(4) that the deed is gratuitous (E. 4. 1. 29); and (5) that the debtor was insolvent at the date of the alienation (*Wood*, 4th Dec. 1823; *Bolden*, 6th March 1863). If any of these are not averred the action may be dismissed; or perhaps, as in *Bolden's* case, amended on payment of costs. As to the relevancy of summons, *vide M'Cowan*, 21st June 1852.

3. *What is Insolvency?*—As to insolvency at the date of the alienation, it may be observed—(1) It is enough that there be an adequate visible estate left after the alienation, to meet the debtor's liabilities (E. 4. 1. 28; 2 B. C. 193). (2) Subsequent depreciation is of no consequence (2 B. C. 193; *Remington*, 10th Dec. 1829). (3) Rights *in spe* are not taken into account in estimating solvency (2 B. C. 193). (4) As to computation of liferent interests, *vide* 2 B. C. 193; A. B. 17th Nov. 1837, F. C.

(*h*) The action where it is raised by a single creditor should contain nothing but conclusions to reduce or set aside the deed, as the effect is simply to destroy the alienation, and place the subject of the alienation open to the diligence of the challenging creditor (*vide* note *j*, *infra*), and confers no positive right to it upon him (2 B. C. 196). But where it is raised by a trustee, he may combine with it a conclusion for restitution, or count and reckoning and payment (2 B. C. 195).

(*i*) The practice has been only to admit the challenge by way of action, notwithstanding the above enactment (2 B. C. 194). But it has been enacted by the recent Sequestration Statute that deeds reducible under this Act may be set aside by way of action or exception, and a decree setting aside the deed by exception shall have the like effect, as to the party objecting to the deed, as if such decree were given in an action at his instance (Act 1856, s. 10, *postea*).

(*j*) 1. The immediate effect of the challenge, if made by a single creditor, seems to be to open the property or fund to the diligence of that creditor. (*Vide Brodie's Stair*, p. 96; 2 B. C. 196.)

2. If a trustee under sequestration is pursuer, he challenges for behoof of all the creditors. (Act 1856, s. 11, *postea*.)

(*k*) It is sufficient participation in the fraud if the third party *knew* that the alienation was made by the debtor to a conjunct and confident person without true, just, and necessary cause, and to the hurt and prejudice of his creditors, and it is not necessary also to show that the third party acquired a translation gratuitously. (*Caird*, 3d Dec. 1857; *vide* 2 B. C. 196.)

(*l*) A bill by a father insolvent to a son held good in the hands of a *bona fide* indorsee. (*Brodie*, 21st Nov. 1749, D. 907.)

(*m*) 1. *Mode of Proof.*—Of course the oath of the receiver, though competent, is not the only mode of proof open to the challenger. (2 B. C. 191.)

2. *Onus Probandi.*—*Vide* note *g*, *supra*.

3. *Proof of Solvency.*—(1) After delay of forty years, the grantee is not bound to prove solvency (*Spence*, 6th Dec. 1692, D. 1015). (2) After considerable delay the creditors cannot insist on going narrowly to work in their reckonings, but the question must be taken on a broad and fair and rather favourable view for the debtor (2 B. C. 194). (3) A remit to an accountant made to report as to solvency (A. *v* B., 17th Nov. 1837, F. C.)

4. *Proof of Onerosity.*—(1) After delay of forty years, the grantee is not bound to prove onerosity (*Blackwood*, 18th Jan. 1749, D. 904; *Elliot*, 10th Nov. 1749, D. 905). (2) A remit made to an accountant to examine the

accounts between the parties, and report whether alienation gratuitous (*Lang*, 18th Jan. 1832).

(*n*) No direct proof of fraud is necessary. (2 B. C. 183.)

(*o*) The correspondence passing between the receiver and his law agent is not privileged. (*M'Cowan*, 14th Dec. 1852.)

NOTES ON BRANCH II.

(*p*) 1. Insolvency of the debtor is essential. (2 B. C. 199.)
2. Also it must be notorious—at least known to the receiver (*Royal Bank*, 24th Feb. 1709, D. 1058; *Tweedie*, 7th Jan. 1715, D. 1037; *Grant*, 6th Feb. 1835; *vide* 2 B. C. 199.)

(*q*) 1. Any deed such as an infeftment or intimation to complete a previous deed is not struck at by the Act. (2 B. C. 202.)
2. Neither is a transaction for cash paid or lent, nor any *novum debitum*, within the Act. (Ibid.)
3. Deeds which the debtor could be compelled to grant are of course not reducible. (Ibid.)
4. Goods delivered to a creditor under pressure of personal diligence not recoverable under this Statute. (*Gordon*, 19th Feb. 1724, D. 1041.)

(*r*) A cash payment is not struck at. (2 B. C. 201.)

(*s*) 1. The Act applies to gratuitous rights to strangers, as well as securities to creditors (2 B. C. 202). 2. Also to deeds in security or satisfaction to creditors, but not to *nova debita* (ibid.) 3. Also to the granting of a bond as a voucher to facilitate diligence at the instance of a creditor (2 B. C. 203). 4. Also to a trust-deed in favour of creditors (*Grant*, 6th Feb. 1835).

(*t*) 1. It seems sufficient evidence of fraud that the diligence of the creditor was knowingly defeated by the act of the debtor. (*Grant, supra.*)
2. It has been decided that the receiver should participate in the fraud (*Tweedie*, 7th Jan. 1715, D. 1037; *Grant, supra*); but since a recent decision (*M'Cowan*, 10th March 1853) this would not seem to be necessary. It seems enough that the receiver know of the debtor's insolvency, or at least that it be sufficiently notorious that he may be reasonably presumed to know it, without requiring that he should know anything of the creditor's proceedings, or collude with the debtor in order to defeat them. (*Vide* 2 B. C. 199.)

(*u*) Where the receiver showed that he had attached the subject before the challenging creditor by arrestment, and that the deed was granted afterwards, it was not reduced. (*Gellatly*, 6th Feb. 1688, D. 1053.)

(*v*) 1. The diligence must be legal and regular. (2 B. C. 201.)
2. There must be no undue delay in conducting it (ibid.) A delay of three months has been held fatal (ibid.)

(*w*) Publication of the inhibition is not necessary (2 B. C. 199).

(*y*) The benefit of this Statute to a challenging creditor mainly lies in the effect given to an inhibition served but not published, and to letters of horning and an extract-decree upon which a charge has been given. In other respects the common-law litigiosity of real actions, and the *nexus* of executed diligence, are perhaps quite enough to serve the creditor's purpose.

ACT 1696, c. 5.

Act for Declaring Notour Bankrupts.—[25th September 1696.]

Our Soveraign Lord, considering that, notwithstanding of the Acts of Parliament already made against fraudful alienations by bankrupts, in prejudice of their creditors, yet their frauds and abuses are still very frequent: Does *therefore*, and for the better restraining and obviating thereof in time coming, with advice and consent of the Estates of Parliament, *statute* and *declare*, that for hereafter, if any debitor, under diligence by horning and caption at the instance of his creditor, be either imprisoned, or retire to the *Abbay* or any other privileged place, or flee, or abscond for his personal security, or defend his person by force, and be afterwards found, by sentence of the Lords of Session, to be insolvent, shall be holden and repute on these three joynt grounds—viz., diligence by horning and caption and insolvency, joyned with one or other of the said alternatives of imprisonment, or retiring or flying, or absconding, or forcible defending, to be a notour bankrupt (*a*), and that from the time (*b*) of his foresaid imprisonment, retiring, flying, absconding, or forcible defending; which being found by sentence of the Lords of Session (*c*) at the instance (*d*) of any of his just creditors, who are hereby impowered to raise and prosecute a declarator (*e*) of bankrupt thereanent: His Majesty, with consent of the Estates of Parliament, declares all and whatsover voluntar (*f*) dispositions, assignations, or other deeds (*g*) which shall be found to be made and granted, directly or indirectly (*h*) by the foresaid dyvor or bankrupt (*i*), either at or after his becoming bankrupt, or in the space of sixty days (*j*) of before (*k*) in favours of his (*l*) creditors (*m*), either for (*n*) his satisfaction (*o*) or farder security, in preference to other creditors, to be void and null (*p*); likeas it is declared that all dispositions, heretable bonds, or other heretable rights whereupon infeftment may follow, granted by the foresaid bankrupts, shall only be reckoned, as to this case of bankrupt, to be of the date of the

seasin lawfully taken thereon, but prejudice to the validity of the said heretable rights as to all other effects as formerly; and because infeftments for relief, not only of debts already contracted, but of debts to be contracted for thereafter, are often found to be the occasion or covert of frauds. It is therefore farder declared, that any disposition or other rights that shall be granted for hereafter for relief or security of debts to be contracted for the future, shall be of no force as to any such debts that shall be found to be contracted after the seasin or infeftment following on the said disposition or right, but prejudice to the validity of the said disposition and right as to other points as accords. And lastly, His Majesty and the Estates of Parliament do hereby *statute* and *ordain*, that if any person shall for hereafter defraud his creditors, and be found by sentence of the Lords to be a fraudulent bankrupt, the degree of his fraud shall also be determined by the same sentence, and the person guilty not only held to be infamous otherways *infamia juris*, but also be by them punished by banishment or otherways (death excepted) as they shall see cause. And the Lords of Session are hereby discharged to dispense any bankrupt as to the habit, unless in the summonds and process of *cessio*, the bankrupt's failing through misfortune be lybelled, sustained, and proven, and this but prejudice of all former acts anent bankrupts, which are still to stand in their full force.

(*a*) As to other modes of creating notour bankruptcy, *vide* Act 1856, s. 7 and 8, *postea*.

(*b*) As to commencement and termination of notour bankruptcy, *vide* ibid., s. 9, *postea*.

(*c*) The challenge is now competent in the Sheriff Court. (Act 1856, s. 10; Act 1857, s. 9.)

(*d*) 1. The challenge is only competent to creditors or a trustee representing creditors, whose debts are anterior in their constitution to the date of the deed challenged. (*Man*, 25th July 1702, D. 1006; *Barclay*, 19th Nov. 1783, D. 1151; *vide* 2 B. C. 209.)

2. The date of a deed is the date of its completion. (Act 1856, s. 6, *postea*.)

3. The trustee in a sequestration reduces for behoof of all the creditors. (Ibid., s. 11.)

4. The bankrupt is also entitled to reduce if he has acquired a title by composition settlement under his sequestration. (Ibid., s. 140, note *o*, *postea*.)

5. A prior disponee to the subject alienated may reduce the posterior disposition. (*Shaw*, 17th Nov. 1747, D. 1150.)

6. So also may a prior assignee. (*Wright*, 7th March 1839.)

7. One co-acceptor of a bill, reducing a deed by another co-acceptor, must have a decree of relief for his title; the bill is not enough. (*Bett*, 27th June 1828.)

8. A legatee is not a creditor, and has no title. (*Borthwick*, 19th June 1838.)

9. The creditors, in pursuing a challenge, must have an interest; so, if the effect of it be simply to open up the fund to another creditor, they have no title to sue. (*Dixon*, 3d Dec. 1828.)

(*e*) 1. The challenge may be by way of action or exception, and a decree setting aside the deed by exception has a like effect, as to the party objecting to the deed, as if it had been given in an action at his instance. (Act 1856, s. 10.)

2. The action is a challenge merely of the deed, where raised by a single creditor, but also of repetition, where it is pursued by a trustee. (2 B. C. 210; Act 1856, s. 11.)

3. The Sheriff has now jurisdiction in such cases (Act 1857, s. 9); but the action must be one with petitory, and not reductive, conclusions (Act 1856, s. 10, note *c*).

(*f*) 1. The debtor is entitled to implement all his obligations as they become due, whether within or without the sixty days prior to notour bankruptcy, and they cannot be questioned; and it is of no consequence whether these obligations are for cash payments (*Taylor*, 8th March 1855; *vide Buchanan*, 25th Jan. 1733, D. 1128; *Forbes*, 26th Jan. 1751, D. 1128; *Bean*, 1st Aug. 1760, D. 907), or *ad facta præstanda* (*Taylor, supra; Cranstoun*, 2d Feb. 1830, H. L., 6 W. S. 79; *Gibson*, 9th July 1833; *Miller's Trustee*, 19th March 1862). But if, instead of being the natural extinction of an old contract, the transaction gives rise to a new one—such as the payment or depositation of money to meet a contingent or future debt, if and when it shall become due (*Taylor, supra; vide Speir*, 15th June 1825, and 30th May 1827, H. L., 22d May 1826, 2 W. S. 253; *Pattison*, 3d Dec. 1828, H. L., 7 W. S. 26); or the granting of an alienation in security of a debt, or in satisfaction,—*i. e.*, as a substitute, for an obligation *ad factum præstandum* (*Taylor, supra;* Lord Fullarton, in *Gibson*, 9th July 1833)—then they are reducible. In short, the Statute does not permit deposits for payments, nor the transfer of goods for money, nor of land for goods, as these are all new transactions. And even where there is no new transaction, but simply an alienation in satisfaction or security of a debt stipulated for when the debt was incurred, and was to have been granted as soon as the deed was prepared, it is null (*Brough* v. *Spankie*, 5th June 1793, D. 1179; *Gourlay*, 2d June 1875; but *vide Miller's Trustee*, 19th March 1862); and it does not save such a deed that it was not only stipulated for when the debt was incurred, but by mistake was believed to have been granted (*Inglis* v. *Mansfield*, 28th June 1833, aff. 10th April 1835, 1 Sh. & M'L., p. 332); but it *does* make the matter worse if, when the security was so stipulated for at the time the debt was incurred, there was in the obligation anything contingent as to the granting of the security, or indefinite as to its nature or the time of granting it, or where undue delay has taken place in having it granted (*Inglis, supra; Tod*, 16th Dec. 1851).

2. As to cash payments, it may be observed that bank cheques and drafts, or a bank bill, are held as cash. (*Dixon*, 3d Dec. 1828; *Pattison*, 3d Dec. 1828; *Ferrier*, 2 B. C. 218, n. 2.)

3. As to implement of contracts, it may also be observed that they mean such contracts as sale (*Cranstoun, supra; Taylor, supra*), or barter (*Gibson, supra*); but of course not loans of money (*Brough, Inglis, Tod, supra*), as these, from their very nature, begin on the footing of debtor and creditor,

and hence, unless the security is taken at the time, it is in vain to take it afterwards, if within sixty days of bankruptcy, although expressly bargained for (*vide Rose*, 26th June 1868).

(*g*) The Act applies to—1. Alienations of land (2 B. C. 210); 2. Delivery of goods (*Smith*, 19th July 1728, D. 1128; *Stiven*, 30th June 1871); 3. Assignations of debts (*Sym*, 6th July 1758, D. 1137); 4. Indorsations of bills (*Campbell*, 10th Aug. 1780, D. 1139; 5. Deposits of bills (*Manson*, 16th July 1771, D. App. Bt., No. 7); 6. Bonds of corroboration (*M'Math*, 7th March 1791, D. 1114); 7. Bills (*Strang*, 12th May 1821); 8. A consent to decree in an action (*Wilson*, 20th Dec. 1853; *Laurie*, 5th Dec. 1867); 9. Prepayments of cash (*Taylor*, 8th March 1855); 10. Prepayments by bill, afterwards altered (*M'Farlane*, 24th Dec. 1870); 11. Trust-deeds (*Douglas*, 15th June 1832; *Wright*, 7th March 1839; *M'Kenzie*, 26th May 1868). But a mere acknowledgment of a debt entitling the creditor to an ordinary ranking is not struck at by the Act (*Mathew*, 28th June 1867).

(*h*) An indirect preference may be effected in various ways:—1. It may be by a collusive sale and delivery of goods from debtor to creditor, which of course is reducible. (*Stewart*, 4th Dec. 1832; *vide Dawson*, 4th Feb. 1840.)

2. Also by the interposition of a third party in the debtor's interest, and who, in the knowledge of the creditor, receives an alienation, and thereupon makes a cash payment to the creditor. In such a case it is valid, but if he grant a bill it is bad. (*Miller*, 11th Dec. 1822, H. L., 12th June 1827, 2 W. S. 579; *Ramsay*, 11th June 1829.)

3. A creditor may get personal security within the sixty days, while the cautioner may in turn get heritable security in relief; and if the creditor knows nothing of this latter transaction, it is not reducible. (*Monteath's Trustee*, 12th Dec. 1794, D. 1146.)

4. Where, however, the interposed party is in the creditor's interest, and is identified with him, then the deed is reducible. (*Barbour*, 30th May 1824.)

5. Of course a debtor may, within the sixty days, sell property to a third party who is not identified with either party, receive the price, and pay his creditor, and both sale and payment are valid (*Buchanan*, 25th Jan. 1733, D. 1128). For other examples of indirect preferences, *vide Young*, 25th June 1783, D. 1141; *Roddan*, 29th June 1815, 2 B. C. 220; *Mitchell*, 26th June 1834.

(*i*) 1. The deed is reducible though not granted by the bankrupt, but by an interposed person in his behalf. (*Ramsay*, 11th June 1829.)

2. It is of no consequence that the deed was executed in England. (*Sym*, 6th July 1758, D. 1137.)

3. Nor that the debtor is an Englishman resident in England. (*Blackburn*, 22d Feb. 1810, F. C.) In this case the property conveyed was heritage in Scotland.

(*j*) As to mode of computing the sixty days, *vide* Act 1856, s. 5, note *a*, *postea*.

(*k*) 1. The date of the deed is the date of its completion. (Ibid., s. 6, *postea*.)

2. Where the deed is executed prior to the sixty days, but completed within the sixty days, the effect of the above provision is to bring the whole transaction within the sixty days, and deal with it accordingly. (*Mansfield*, 13th Feb. 1833; *Inglis* v. *Mansfield*, *supra*; *Chalmers*, 19th Jan. 1726, D. 1231; *Monteath's Trustee*, 12th Dec. 1794, D. 1146.)

(*l*) 1. The receiver of the deed must be a creditor of the bankrupt—not, *e. g.*, the creditor of a brother (*Hamilton*, 9th Feb. 1743, D. 1092). Such a case does not come under this Statute.

2. The creditor having agreed to renew a bill, the debtor, within sixty days of his bankruptcy, guaranteed to that creditor a debt due to him by a third party. Guarantee not reducible. (*Fergusson*, 2d March 1869.)

(*m*) 1. *Nova debita.*—The grantee of the deed must receive it as a *creditor*. If in the course of the transaction the relation of debtor and creditor is not recognised, then the deed is not reducible (2 B. C. 221). It is a new transaction, or *novum debitum* (*Thomson*, 28th Feb. 1806, D. App. Bt., No. 25; *More*, 22d Jan. 1800, 2 B. C. 223; *Watson*, 1st March 1826). In new transactions, within sixty days of bankruptcy, it is not necessary that the transaction in all its parts be concluded *simultaneously* (*vide Thomson, supra*). It is enough that it be carried through in the usual course of business, and that nothing appears of an intention to place the transaction on the footing of debtor and creditor (2 B. C. 221). Notour bankruptcy does not affect such transactions, and where they result in an alienation or deed, it does not matter when the alienation or deed is completed. The deed was, of course, held valid when both granted and completed before the sixty days (*Burgh*, 1st Jan. 1717, D. 1125). Also, when granted before, and completed within the sixty days (*Chalmers*, 19th Jan. 1726, D. 1231; *Monteath's Trustee*, 12th Dec. 1794, D. 1146). Also, when granted before the sixty days, and completed after notour bankruptcy (*Johnston*, 29th Jan. 1751, D. 1130). Also, where both the execution and completion of the deed took place after notour bankruptcy (*Elliot*, 7th March 1768; *Br. sup.* 937). But in all these cases the transactions were *nova debita*, as both the consideration and the execution of the deed were simultaneous, or at least occurred in the usual course of business.

2. The receiver of the deed may be a third party acting in the interest of the creditor, and it is reducible as if granted to the creditor himself. (*Barbour*, 30th May 1824.)

3. It is of no consequence that the creditor's debt was incurred through the delinquency of the debtor, and that the deed was granted to repair the fault. (*Scougal*, 7th Feb. 1828; *White*, 8th June 1843.)

4. Nor that the creditor is an Englishman resident in England. (*White, supra.*)

(*n*) The deed must be *for the purpose* of satisfying or securing a creditor. Fraud is not necessary, yet there must be the intention of conferring the deed upon one who is a creditor in his character of creditor. So where the grantee stands in a double capacity, such as creditor, and also that of banker, factor, buyer, or constituent to the bankrupt, there must be evidence that he received the deed *qua* creditor, as, if he received it in any other capacity, it is not reducible, even although it has the *effect* of enabling him to plead compensation or retention, and thus acquire a preference by force of law. Thus in the case of bills being indorsed to the debtor's bankers (*Stein's Creditors*, 1st March 1791, D. 1142; *Blincow's Trustee*, 3d Dec. 1828, 12th June 1829, H. L., 7 W. S. 26; 22d Jan. 1831; 18th March 1830; *Mur.*, 25th July 1834), or of goods being forwarded to the debtor's factor (2 B. C. 219), or to a bleacher (*Anderson*, 17th March 1871), or of a sale and delivery of goods (*Hepburn*, 11th July 1816, 2 B. C. 214; *Stuart*, 4th Dec. 1832), or of indorsations of bills by an insurance agent to the insurance company (*Richmond*, 26th June 1805, D. App. Bt., No. 24), or by insurance brokers to the underwriters (*Dundas*, 2d

June 1808, D. App. Bt., No. 28); and in all of which cases the alienations were made within the sixty days, but in the usual course of business between the parties, the Court sustained the deeds, although the effect was in each case to allow the grantee to plead compensation, lien, or retention. Indeed, in one case where the creditors purchased by auction from the debtor certain goods, and afterwards, on bankruptcy supervening, pleaded compensation of the price against his debt, no proof was gone into, as it was apparent that the debtor had no intention of conferring a preference (*Bruce*, 27th Jan. 1832). In conclusion, see *Loudon*, 7th Dec. 1877, where, within the sixty days, a purchased article was returned to the seller by the buyer in *bona fide* and in the ordinary course of trade, was held not recoverable.

(*o*) Satisfaction means a *substitute* for implement, not implement itself. (*Vide Taylor*, 8th March 1855.)

(*p*) *Effect of Challenge.*—1. Where a creditor got a preference by the indorsation of a bill, and having *bona fide* acceded to an extrajudicial settlement between the acceptor and his creditors, whereby he discharged the debt for a composition of 8s. per pound, held only liable to repeat to that extent. (*Drummond*, 29th Jan. 1850.)

2. Where, on getting the alienation, the creditor had discharged a third party who was liable for the debt, held on a reduction of the deed that this claim against the third party did not revive. (*Black*, 15th Dec. 1814.)

3. Although by the Act there is no *restitutio in integrum* where the rights or interests of third parties are involved (*Ritchie*, 27th Nov. 1821), yet if the creditor, on getting the preference, had renounced a subject or right which the creditors have taken up, he may *personali exceptione* demand restitution where the challenge is raised by them or their trustee (2 B. C. 233).

4. The reduction is only valid *quoad* the pursuers. (*Ker*, 28th Jan. 1830.)

CESSIO ACT.

6 & 7 WILL. IV. c. 56.

An Act for regulating the Process of Cessio Bonorum in the Court of Session, and for extending the Jurisdiction of Sheriffs in Scotland to such Cases.—[13th August 1836.]

WHEREAS it is expedient to regulate the Process of Cessio Bonorum in the Court of Session in Scotland, and to extend the jurisdiction of the Sheriff to such processes; be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That after the first day of October One thousand eight hundred and thirty-six every Sheriff within Scotland shall possess jurisdiction (*a*) in processes of cessio bonorum brought before him in manner hereinafter provided as fully as in any other action presently by law competent before him, and the Sheriff Clerk and messengers-at-arms and all sheriff-officers in the several sheriffdoms in Scotland shall have power to act in their respective offices in relation to such processes.

Sheriffs to have jurisdiction as to cessio bonorum, and Sheriff Clerks and officers to act therein.

(*a*) The Sheriff is now the only judge in cessios. (39 & 40 Vict. c. 70, s. 26.)

II. And be it enacted, That, if a debtor has been or shall be charged to pay a civil debt, and a warrant to imprison him has been issued, or if he be liable to imprisonment under a decree of a Small Debt Court, or be in prison or imprisoned and afterwards liberated in respect in these several cases of a civil debt, it shall be competent to such debtor, on or after the said thirty-first day of October, to apply for interim protection and for decree of cessio bonorum in the manner hereinafter provided (*a*).

A debtor against whom a warrant is issued, &c., may apply for decree of cessio.

(*a*) *Vide* s. 26 of 39 & 40 Vict. c. 70, *postea*.

Debtor may present to the Sheriff of the county in which he lives a petition praying for decree of cessio.

III. And be it enacted, That after the said first day of October such debtor may present to the Sheriff of the county in which he has his ordinary domicile (*a*) a petition, setting forth that he has been charged, and that a warrant to imprison has been issued against him, or that he is liable to imprisonment under a small debt decree, or that he is in prison, or has been imprisoned and afterwards liberated, in respect of a civil debt; that he is unable to pay his debts, and is ready to surrender his estates for behoof of his creditors, and praying for interim protection against the execution of diligence, and for decree of cessio bonorum; in which petition he shall insert a list of all his creditors, specifying their names and designations and places of residence, so far as known to him: and with such petition he shall produce (as the case may be) the schedule of an expired charge, or a copy, certified by the Clerk of the Small Debt Court, of the warrant on which he is liable to imprisonment, or, if he be in prison, or imprisoned and thereafter liberated, a certificate from the keeper of the prison of such imprisonment, and the date thereof, and of the liberation.

(*a*) 1. As to nature and proof of domicile, *vide Hamilton*, 5th June 1852.
2. Sheriff's jurisdiction extends to foreign creditors. (*Kennedy*, 10th March 1838.)

Proceedings upon such petition.

IV. And be it enacted, That on such petition being presented the Sheriff shall issue a warrant appointing the debtor to publish a notice in the 'Edinburgh Gazette,' intimating that such petition has been presented, and requiring all his creditors to appear in court on a certain day, being not less than thirty days (*a*) from the date of the Gazette notice, and within five days (*b*) after the date of such notice to send letters to all the creditors (*c*) specified in the petition, containing a copy of the said notice (paying the postage thereof), or, in his option, to cite them in terms of law, and which the debtor shall do accordingly, and the Sheriff shall farther ordain him to appear on the day so appointed for the compearance of the creditors in presence of the Sheriff or his Substitute for public examination; and the debtor shall, on or before the sixth lawful day prior to the day so appointed, lodge, to be patent to all concerned, a state of his affairs subscribed by himself, and all his books, papers, and documents relating to his affairs, in the hands of the Sheriff Clerk, together with a copy of the said Gazette, and if the letters have been sent through the post-office, a certificate subscribed by his agent, or by a messenger or sheriff-officer and a witness, stating the date and the place where the letters were put into the post-office, that the postage was paid, and that they were severally addressed as

specified in the petition, or an execution subscribed by a messenger or sheriff-officer and one witness, of citation of the creditors to whom such letters have not been so sent.

(*a*) If the thirty days' inducia be not expired, the Court will *ex proprio motu* stay proceedings. (*Fulton*, 10th March 1838.)

(*b*) When more than five days have elapsed the process is not nullified, but intimation must be made "over again by fresh notice in the Gazette, and by new letters." (*Ockleford*, 19th Feb. 1856.)

(*c*) Where any creditors are furth of Scotland, it is now sufficient that intimation be given to their known agents or mandatories in Scotland. (39 & 40 Vict. c. 70, s. 26.)

Debtor to undergo examination before Sheriff.

V. And be it enacted, That on the said day appointed for the compearance of the creditors the debtor shall appear in public court in presence of the Sheriff for examination as to his affairs, and the Sheriff shall have power to put him on oath or affirmation (as the case may be), and the debtor shall be bound to answer all pertinent questions put to him by the Sheriff, or by any creditor with the approbation of the Sheriff, under certification that if, without lawful cause, he refuse to be put on oath or affirmation, or to answer any such question, or to subscribe his examination, decree of cessio shall be refused *in hoc statu;* and it shall be competent to the Sheriff to adjourn the examination for such time as to him shall appear fit and reasonable.

Sheriff after examination, to decide in cases originating before him.

VI. And be it enacted, That the Sheriff shall, on such examination being taken, allow a proof to the parties if it shall appear necessary, and hear parties *viva voce*, and shall make a note of any objections that may be stated on the part of the creditors, and either grant decree or refuse the same *in hoc statu* (*a*), or grant it subject to a declaration that it shall not be extractable or available as a protection to the debtor, for such time as shall appear proper, or make such other orders as may be necessary for the due administration of justice (*b*), provided that where the Sheriff shall grant decree under such limitation, or refuse decree *in hoc statu*, he shall state the grounds of his decision, and the most summary despatch consistent with the forms of Court shall be given, and the Sheriff's note of the objections shall form part of the process.

(*a*) 1. Cessio ought to be refused *hoc statu* where there is concealment of funds. (*Manson*, 27th Nov. 1844; *vide Donaldson*, 25th June 1873.)

2. The applicant must make out a case for cessio, and it will not be granted as a matter of course because the creditors do not *prove* fraud, concealment, or falsehood; and it is the duty of the Sheriff to inquire into the case, and to encourage creditors to come forward and make statements. (*Wright*, 9th March 1855, and 9th Feb. 1856.)

(*b*) 1. Where cessio granted on condition of bankrupt assigning to the trustee

in his sequestration "one-third of his income," *held* that this meant his income whether derived gratuitously or not. (*Robertson*, 29th Nov. 1873.)

2. Where a person incarcerated for damages on the ground of seduction, breach of promise, and aliment, *held* entitled to cessio on condition of granting an obligation to pay weekly to the incarcerating creditor one-third of his wages. (*Mitchell*, 13th July 1875.)

Reclaiming petition.

VII. And be it enacted, That if such decree be pronounced by the Sheriff-Substitute, it shall be competent to any person aggrieved to present a reclaiming petition against the same, provided that the petition be lodged within six days from the date of the judgment, and the Sheriff-Substitute shall do therewith as shall be just; and in case the complainer shall intimate his desire in the petition that if the Sheriff-Substitute be disposed to refuse the petition it may be laid before the Sheriff, it shall be transmitted to the Sheriff, who shall do therein as shall be just (*a*).

(*a*) 1. So long as decree is open to review it has no effect. (*Bald*, 11th Feb. 1859.)

2. As to review, *vide* s. 26 of 39 & 40 Vict. c. 70, *postea*.

Review of Sheriff's judgments by Court of Session.

VIII. And be it enacted, That it shall be lawful, either after such reclaiming petition has been disposed of or without presenting such petition, for any person aggrieved to bring the judgments (*a*) under the review of the Court of Session by lodging with any one of the Clerks of that Division of the Court under whose review he wishes to bring the cause a reclaiming note, having such Division marked thereon, reciting the judgment or judgments complained of: Provided always, that the said note shall be lodged within ten days (*b*) from the date of the judgment or the last of the judgments complained of, unless the judgment be pronounced by the Sheriff of Orkney, in which case the reclaiming note shall be lodged within twenty days from the date of the judgment or the last of the judgments as aforesaid; and a copy of the said note shall in all cases be delivered within the said respective periods to the respondent or his known agent, which shall be held to be due service, and a copy thereof, certified by the said Clerk of Session, shall be a sufficient warrant to the Sheriff Clerk to transmit to the said Clerk the proceedings in the process.

(*a*) It is only the Sheriff's judgment granting or refusing cessio under s. 6 that can be taken to the Court of Session. (*Galbraith*, 6th Dec. 1856.)

(*b*) *Summers*, 29th Jan. 1839. But see 39 & 40 Vict. c. 70, s. 26, as to review.

Reclaiming note to be enrolled, and Court to pro-

IX. And be it enacted, That if the Court of Session be sitting, the reclaiming note shall be enrolled as soon as conveniently can be, and the Court shall pronounce judgment, or remit the cause to the Sheriff with such instructions as to

nounce judgment, &c.

them shall seem fit, or to the Lord Ordinary on the Bills during vacation, or during the Christmas recess (*a*).

(*a*) See above Statute.

Lord Ordinary on Bills may judge during vacation or Christmas recess, subject to review.

X. And be it enacted, That if the Court of Session be not sitting when the reclaiming note has been lodged, the cause shall, as soon as thereafter may be convenient, be transmitted to the Bill Chamber Clerk, and enrolled in a roll to be kept for that purpose in the Bill Chamber; and the Lord Ordinary on the Bills shall, on a day to be specified in that roll, hear parties *viva voce*, and pronounce judgment as hereinbefore provided; and for the purposes of this Act he shall possess, during the vacation and the Christmas recess, the powers competent to the Inner House during session, but his judgment shall be subject to review in manner hereinafter mentioned; and if the proceedings have not been brought to a termination before the Lord Ordinary on the Bills at the commencement of the ensuing session, the cause shall be retransmitted and enrolled before the Inner House, which may give judgment therein as if it had been enrolled or had continued without interruption before the Inner House.

Proceedings in cases originating in the Court of Session.

XI. And be it enacted, That where a summons of cessio bonorum is raised before the Court of Session (*a*) the debtor (*b*) shall publish a notice in the 'Edinburgh Gazette,' intimating that the said summons has been raised, specifying in which Division of the Court it is to be enrolled, and requiring all his creditors to appear within thirty days from the date of the said Gazette notice; and he shall also send letters through the post-office (paying the postage thereof) to each of the creditors specified in the summons to the same effect, or, in his option, cite them in terms of law; and on or before the sixth lawful day prior to the expiration of the said thirty days he shall lodge, to be patent to all concerned, a state of his affairs subscribed by himself, and all his books, papers, and documents relating to his affairs, in the hands of the Clerk to the process, together with a copy of the said Gazette; and if the letters have been sent through the post-office he shall produce a certificate subscribed by his agent, or by a messenger or Sheriff-officer, and a witness, stating the date and the place where the letters were put into the post-office, that the postage was paid, and that they were severally addressed as specified in the summons, or an execution subscribed by a messenger and one witness of citation of the creditors to whom such letters have not been so sent.

(*a*) The Sheriff is now the only judge in such cases. (39 & 40 Vict. c. 70, s. 26.)

(*b*) Where the debtor was an Englishman and his creditors were all in England, and he had no property in Scotland, held that he was not, by virtue of forty days' residence in Scotland, entitled to apply for cessio. (*Shilleto*, 30th March 1862; *vide Hossack*, 16th Dec. 1841.)

Court of Session may remit to the Sheriff, who shall take proceedings thereupon and report.

XII. And be it enacted, That on expiration of the said thirty days the process shall forthwith be enrolled in the rolls of the Division of the Inner House specified in the said notice, without the necessity of being called or enrolled in the Outer House; and it shall be competent to the Inner House to remit to the Sheriff of the county in which the debtor's domicile is, to take his examination in presence of his creditors, and for that purpose, on a day appointed, the debtor shall appear in presence of the Sheriff, who shall have power to put him on oath or affirmation (as the case may be), and the debtor shall be bound to answer all pertinent questions put to him, under certification that if, without lawful cause, he refuse to be put on oath or affirmation, or to answer any such question, or to subscribe his examination, decree of cessio shall be refused *in hoc statu;* and the Sheriff shall thereupon report to the said Inner House, who may either grant decree or refuse the same *in hoc statu*, or grant it subject to a declaration that it shall not be extractable or available as a protection to the debtor for such time as shall appear proper, or issue such other orders as may be necessary for the due administration of justice.

Lord Ordinary on the Bills may judge on the report during vacation or Christmas recess.

XIII. And be it enacted, That if the Court of Session be not sitting at the time when the said report has been made by the Sheriff, the cause may be enrolled in a roll to be kept for that purpose in the Bill Chamber, and the Lord Ordinary on the Bills shall, on a day to be specified in that roll, hear parties *viva voce*, and pronounce judgment; and if the Court of Session be sitting when the report of the said examination is made, but the proceedings cannot be brought to a termination before the expiration of the session, or before the commencement of the Christmas recess, the Inner House may remit the cause to the said Lord Ordinary to proceed therein during vacation or the Christmas recess, in the same way as if the cause had been enrolled in the Bill Chamber in manner above provided; and if the proceedings have in any case not been brought to a termination before the Lord Ordinary on the Bills at the commencement of the ensuing session, the cause shall be enrolled before the Inner House, which may give judgment therein as if it had been enrolled, or had continued without interruption before the Inner House; and for the purposes of this Act the Lord Ordinary on the Bills shall possess, during the vacation and the Christmas recess, the

powers competent to the Inner House during session; but his judgment shall be subject to review in manner herein-after mentioned.

Judgment of the Lord Ordinary on the Bills subject to review.

XIV. And be it enacted, That it shall be competent for any person aggrieved by any judgment pronounced by the Lord Ordinary on the Bills to bring the same under the review of the Inner House by a reclaiming note, provided the note be lodged within ten days after the date of the judgment, and duly intimated to the agent of the respondent; and the Inner House shall proceed with all despatch to hear parties *viva voce* thereon, and may give judgment as aforesaid, or issue such other orders as may be necessary for the purposes of justice.

Power to grant interim protection or liberation.

XV. And be it enacted, That if the debtor be in prison it shall be competent for the Inner House during session, and for the Lord Ordinary on the Bills during the vacation or the Christmas recess, whether the case has been originally instituted in the Court of Session or before the Sheriff (provided that it be under review of the said Court), and for the Sheriff, where the petition has been presented to and is depending before him, on production of a copy of the said Gazette containing the notice aforesaid, and of the certificate of transmission of the letters or execution of citation, to grant warrant to liberate the debtor (*a*), and if the debtor is not in prison to grant warrant for his personal protection against the execution of diligence for such space of time as shall be proper (*b*); provided that before any such warrant be issued the debtor shall lodge with the Clerk of Court a bond with a sufficient cautioner, binding themselves that he shall attend all diets of Court whenever required under such penalty as may be reasonable (*c*), and which, if forfeited, shall be divided among the creditors; and it shall be competent for the Inner House, or the said Lord Ordinary, or the Sheriff respectively, in all cases to grant warrant to bring the debtor before them for examination, and also to carry him back to prison; and such warrant, as well as the warrant of liberation and the warrant of personal protection, shall be good and lawful warrants in all parts of Scotland to the effect therein specified; and it shall not be competent, where the warrant of liberation or protection is granted by the Lord Ordinary on the Bills or the Sheriff, to suspend the effect thereof by lodging a reclaiming note or petition complaining of the same: provided nevertheless, that a reclaiming note or petition may be lodged as herein-before provided, and it shall be competent to the Inner House or the Sheriff (as the case may be), on hearing parties, to recall the warrant of liberation and protection.

(*a*) Held that interim liberation cannot be granted under the Act until the induciæ of thirty days for creditors to appear has expired (*Henderson*, 3d Dec. 1869). But see s. 26 of 39 & 40 Vict. c. 70, *postea*, as to Sheriff's power to grant interim protection and liberation.

(*b*) *Vide Anderson*, 20th Feb. 1849.

(*c*) *Jones*, 23d Feb. 1838.

Decree to operate as an assignation to creditors, or disposition omnium bonorum to be granted.

XVI. And be it enacted, That the decree (*a*) pronounced by the Inner House, or by the Lord Ordinary on the Bills, or by the Sheriff, granting the benefit of cessio bonorum, shall operate as an assignation (*b*) of the debtor's moveables in favour of any trustee mentioned in the decree for behoof of the creditors (*c*): Provided always, that it shall be optional to the creditors to require the debtor to execute a disposition omnium bonorum (*d*), as has been hitherto granted in processes of cessio before the Court of Session, in favour of the trustee, the expense of which deed shall be paid out of the readiest of the funds thereby conveyed.

(*a*) Where party found entitled to cessio, but no decree followed, held not to operate as an assignment. (*M'Gregor*, 14th Dec. 1852.)

(*b*) Opinion that intimation or possession not necessary. (*Bald*, 11th Feb. 1859; *vide M'Donald*, 3d July 1852.)

(*c*) As to debtor's rights where trustee does or does not act, *vide Gavin*, 10th June 1843.

(*d*) *Taylor*, 21st Jan. 1854. 1. As to bringing trustee to account, *vide Heggie*, 18th March 1858. 2. As to supervision and control over trustee, *vide* Act 1856, s. 167.

Provision where decree refused in hoc statu.

XVII. And be it enacted, That if the decree of cessio be refused *in hoc statu* either by the Court of Session or the Sheriff, the debtor may at any time thereafter, without the necessity of raising any new summons or presenting any new petition, apply to have decree of cessio pronounced in his favour; and if the decree has, on review by the Court of Session, been refused *in hoc statu*, the debtor may either apply to that Court for decree, or present a new petition to the Sheriff, in which latter case proceedings shall take place as if no former petition had been presented, and the debtor shall in all cases of a renewed application give notice thereof in such manner as shall be appointed either by the Court of Session or Sheriff respectively (*a*).

(*a*) Where decree refused, debtor found liable in costs. (*Grassick*, 1st Feb. 1860.)

Dyvour's habit abolished.

XVIII. And be it enacted, That it shall not be lawful to ordain the debtor to wear the dyvour's habit; and he shall be required to prove his insolvency (if the same shall be denied)

Oath to be taken and insolvency proved if denied.

as by law presently established; and he shall be bound to make oath or affirmation, in cases before the Sheriff as well as in those before the Court of Session, in the same terms as the oath hitherto administered in processes of cessio in the Court of Session; and an Act of the Parliament of Scotland, passed in the year sixteen hundred and ninety-six, entituled *An Act for declaring Notour Bankrupts*, shall be and is hereby repealed in so far as the said Act bears that "the Lords of Session are hereby discharged to dispense any bankrupt as to the habit, unless in the summons and process of cessio the bankrupt's failing through misfortune be libelled, sustained, and proven."

Act of 1696, c. 5, in part repealed.

Regulation of appeals to the House of Lords.

XIX. And be it enacted, That nothing herein contained shall exclude an appeal to the House of Lords against the judgment of the said Inner House, either granting or refusing decree of cessio: Provided always, that the petition of appeal be lodged within ten days from the date of the judgment during the sitting of Parliament, if it shall continue to sit for so many days, and if Parliament be not sitting, or, if sitting, there be not so many days, then the petition of appeal shall be presented within six days after the next session of Parliament shall have met.

No fee fund dues or government duties exigible.

XX. And be it enacted, That no fee fund dues shall be exigible in respect of any of the proceedings mentioned in this Act, nor shall any stamp duty or other government duty be exigible in respect of any notices or advertisements authorised by this Act to be inserted in the 'Edinburgh Gazette,' nor in respect of any disposition which the debtor shall be ordained to execute in terms of this Act; any law or statute to the contrary notwithstanding.

Court of Session agents may practise in Sheriff Courts.

XXI. And be it enacted, That it shall be lawful for all agents duly qualified to practise before the Court of Session to practise as agents in all Sheriff Courts in so far as relates to any of the proceedings which are authorised by this Act to be carried on before the Sheriff; provided that they shall not be entitled to payment of any other or higher fees than those legally exigible by other agents before such Courts.

Act may be repealed this session.

XXII. And be it enacted, That this Act may be repealed, altered, or amended by any Act or Acts passed during the present session of Parliament (*a*).

(*a*) By 1 & 2 Vict. c. 119, the Court of Session is empowered to make regulations for carrying into effect the provisions of the above Act. Accordingly, an Act of Sederunt to regulate proceedings in actions of cessio bonorum in the Court of Session was passed on 24th Dec. 1838, but it is now unnecessary to refer to that Act, as, by 39 & 40 Vict. c. 70, s. 26, processes of cessio are now confined to the Sheriff Court. The Act of Sederunt applicable to such actions in the Sheriff Court is given *postea*.

SHERIFF COURTS (SCOTLAND) ACT, 1876.

39 & 40 VICT. c. 70.

XXVI. From and after the passing of this Act, the following provisions shall have effect with respect to processes of cessio bonorum :—

(1.) All such actions shall be instituted in the Sheriff Court only.

(2.) A debtor being insolvent and under a charge to pay any civil debt, on which charge imprisonment may follow, or against whom a decree for payment of civil debt not requiring a charge has been granted, on which imprisonment may follow, shall, being prepared to surrender his whole means and estate to his creditors, be entitled to raise an action in the Sheriff Court praying for interim protection and for decree of cessio bonorum, under the Act of the sixth and seventh years of the reign of King William the Fourth, chapter fifty-six, as amended by this Act; and the production of the said charge, or a certificate of the granting of such a decree as aforesaid, under the hands of the Clerk of the Court which granted the same, shall be a sufficient title on which to raise such action.

(3.) It shall be lawful for the Sheriff—

(*a*) At once to grant interim protection against imprisonment for civil debt to the applicant, on his finding caution for such amount as the Sheriff may deem reasonable for his appearance at all diets of the process.

(*b*) When the applicant is in prison, to grant warrant for his interim liberation, after forty-eight hours' notice to the incarcerating creditor or his known agent of the motion for liberation, and on caution being found for such amount as the Sheriff may deem reasonable for the applicant's appearance at all diets

of the process, and also binding the cautioner to present the applicant at the prison for reincarceration, should the cessio be refused or the interim warrant be recalled.

(4.) Judgments or interlocutors pronounced in such actions shall be reviewed on appeal, in the same form and subject to the like provisions, restrictions, and conditions as are by law provided in regard to appeals against any judgment or interlocutor pronounced in any other action in the Sheriff's ordinary Court; but warrants of interim protection or interim liberation shall become effectual when granted, and remain good till recalled.

(5.) Any notices or intimations required by law to be given to creditors shall be sufficiently given, in the case of creditors furth of Scotland, if given to their known agents or mandatories in Scotland.

ACT OF SEDERUNT

REGULATING

PROCESSES OF CESSIO BONORUM IN SHERIFF COURTS,

RAISED UNDER THE

STATUTE 6 & 7 WILL. IV. c. 56.

EDINBURGH, *6th June* 1839.

The Lords of Council and Session having considered a report from the Sheriffs of Scotland respecting the expediency of regulating the procedure in processes of cessio bonorum in Sheriff Courts, so as to render the same as nearly uniform as possible in all the Sheriff Courts, and consistent with the enactments of the late Act 6th & 7th Will. IV. cap. 56, do hereby enact and declare as follows:—

I. All petitions for the benefit of cessio bonorum presented to the Sheriff shall be framed in terms of 6th & 7th Will. IV. c. 56, s. 3, and shall be in the form of Schedule (A.) hereto annexed, or as near thereto as the circumstances permit.

II. When intimation is made to the creditors by letter, in terms of s. 4 of the Statute, the transmission of a copy of the notice in the Gazette required by the Statute, addressed to each creditor (*a*), shall be held a sufficient implement of the said enactment, but the name of the petitioner's agent shall always appear in or be annexed to the said notice.

(*a*) *Vide* 39 & 40 Vict. c. 70, s. 26, as to creditors furth of Scotland.

III. When the debtor avails himself of the option given by

s. 4, to cite any of the creditors in terms of law, the citation shall be given not later than ten days next after the publication in the Gazette; and the creditors shall be cited to a diet of compearance at least thirty days subsequent to the date of publication in the Gazette.

IV. When the petition for cessio prays also for interim protection from diligence, or liberation, that prayer shall be specially intimated by the notice in the Gazette, and by the letters (if any) sent to the creditors.

V. The certificate of the letters having been duly transmitted, shall in all cases contain the particular address of each letter as sent.

VI. In processes of cessio, whether the creditors or any of them shall have been called by letters or cited in terms of law, the cause shall not be enrolled, nor shall any procedure take place therein, either as to the cessio, or any application for interim protection or liberation, or otherwise, until the diet of compearance in the cause; without prejudice to the debtor lodging in the hands of the Clerk of Court the documents specified in s. 4 of the Statute, on or before the sixth day prior to the day of compearance.

VII. If the debtor fail to lodge in the hands of the Sheriff Clerk the state, books, and other documents required by s. 4 of the Statute, by the time therein specified, the process shall be dismissed by the Sheriff, unless he shall be satisfied that the debtor had sufficient excuse; in which case the Sheriff may order new intimation to the creditors, or make such order as he may think necessary.

VIII. When it is objected that all the creditors have not been called, the objector shall, at the time of stating his objection, give in a list, signed by himself or his agent, specifying the names, and the designations so far as known, of the creditors alleged to be omitted; and the Sheriff shall have power to dispose of the objection as he may see cause, and, in particular, he may either dismiss the process, or give authority, by a special interlocutor (which interlocutor shall not be subject to review by appeal or otherwise), to call the persons named in the said list, by citation on the petition, to compear within six days after citation, if within Scotland, or otherwise to call the said creditors (*a*), whether in Scotland or furth thereof, by letter (post-paid), to compear within fifteen days after the despatch of the letter; and if it shall afterwards appear that those persons, or any of them, were not creditors, the objector shall be found liable in the expenses unnecessarily occasioned by his objection.

(*a*) *Vide* 39 & 40 Vict. c. 70, s. 26, as to creditors furth of Scotland.

IX. When creditors not originally called, but afterwards cited under authority of the Sheriff, as already provided in s. 8 of this Act of Sederunt, shall appear in the process, it shall be competent for the Sheriff, on the application of such creditors, in case the original diet for the debtor's examination has elapsed before such appearance, to fix another diet for his re-examination; of which diet it shall be incumbent on the debtor to give notice to each of the original creditors, or his known agent, by letter post-paid.

X. When the process has been raised by a bankrupt under sequestration, and not discharged, it shall be necessary to produce a certificate under the hands of the trustee or of a majority of the commissioners, stating whether the bankrupt has attended the diets fixed for his examination, and setting forth how far he has, in their opinion, or to the best of their knowledge and belief, made a full and fair surrender of his means and estate, and has in other respects duly complied with the requisites of the Bankrupt Act (*a*), reserving the effect of such certificate to be considered by the Sheriff; and further, reserving power to him to require a special report from the trustee or commissioners, or to order them to attend for examination on oath or otherwise (*b*). The trustee, or a majority of the commissioners, shall be bound, within eight days after requisition by the bankrupt, to grant such certificate, or failing thereof, it shall be competent to proceed in the cause as if the same had been granted.

(*a*) A trustee having granted a certificate in the above terms, while in the sequestration he had rejected certain claims on the ground that the vouchers had been fabricated, and had found that the bankrupt was a party to the fabrication, was called to the bar and severely censured, and proceedings ordered to be laid before the Lord Advocate. (*Fitzsimmons*, 29th May 1868.)

(*b*) *Queenan*, 11th Feb. 1860; *M'Kellar*, 13th June 1860.

XI. When the debtor shall, either in his original petition, or afterwards, by incidental petition, apply for interim protection from diligence, or for liberation from prison, he shall set forth the amount of caution, and the name of the cautioner or cautioners offered by him, and a copy of the petition, when presented separately, shall be served on the agent or agents for the opposing creditors, forty-eight hours at least before being moved in court; and the Sheriff shall thereafter, on hearing parties, do therein as may seem just; the debtor always finding caution to the satisfaction of the Clerk, to such amount as may be fixed by the Sheriff, before interim protection or liberation shall be granted. The bond of caution shall be according to one or other of the forms contained in Schedule (B.) annexed.

XII. When the debtor shall have been put on oath at his first examination, under s. 5 of the Statute, the creditors shall not be thereby precluded from afterwards proving their case, in opposition to the cessio, by witnesses, or other competent evidence.

XIII. When a proof is allowed, it is recommended that the Sheriff shall, by the interlocutor allowing it, specify, if possible, under articulate heads, the several facts to be proved by either party.

XIV. The Sheriff shall, in all cases, either make notes of the evidence, which notes shall form part of the process; or he may, by an interlocutor, which shall not be subject to review by appeal or otherwise, appoint the proof, or any part thereof, to be taken down *verbatim* by the Clerk, which shall be subscribed by the witness or witnesses, and by the Sheriff, or commissioner, when a commission is necessary.

XV. When the Sheriff shall make a note of objections, under s. 6 of the Statute, he shall also make a note of the answers thereto. These notes shall, before being lodged in process, be signed by the Sheriff.

XVI. It shall be competent for the Sheriff to hear parties *viva voce*, both at the time of the debtor's examination (whether on declaration or oath), and on the proof, and at such other times as may appear to him to be necessary; and in either case, he shall make a note of objections and answers, as before provided.

XVII. It shall be competent for the Sheriff to allow answers to reclaiming petitions lodged under s. 7 of the Statute.

XVIII. No appearance for an opposing creditor shall be allowed, without production of the letter sent to him, the citation served, or a mandate subscribed by him.

XIX. It being provided by s. 18 of the Statute, that debtors, on obtaining decrees of cessio, "shall make oath in the same "terms as hitherto administered;" it is declared, that when debtors take and subscribe an oath or affirmation in the form contained in Schedule (C) hereto annexed, they shall be held to have sufficiently complied with the provisions of the Statute.

XX. It shall be competent for the Sheriff to ordain the debtor, whether under protection or not, to attend at any diet of Court, and particularly at any diet at which an interlocutor, granting or refusing the cessio, may be pronounced, intimation of such order being always made to the cautioners of the debtor.

XXI. When any interlocutor is pronounced, refusing the cessio, or granting it, subject to a declaration that it shall not be extractable or available as a protection to the debtor for a certain time, any unexpired liberation or personal protection

granted to the debtor under the Statute shall be held as *ipso facto* recalled, without prejudice to the debtor again petitioning the Sheriff for protection or liberation, while the case remains in the Sheriff Court.

XXII. It being provided by s. 17 of the Statute, that when the decree of cessio has been refused *in hoc statu*, it shall be competent to the debtor, at any time thereafter, to make a renewed application for the benefit of the cessio, and that the "debtor shall, in all cases of a renewed application, give notice "thereof in such manner as shall be appointed either by the "Court of Session or Sheriff respectively;" It is enacted, that it shall be competent for the debtor to make the renewed application by a minute, without argument, annexed to his original petition; and that he shall give notice thereof to all his creditors, by letters, addressed to each through the post-office, paying the postage thereof; and the case shall not be taken up till twenty days after the despatch of all the said letters, the fact of the despatch being established by certificates satisfactory to the Sheriff.

XXIII. When it shall appear that any of the provisions of the Statute, or of this Act of Sederunt, have been omitted or not duly complied with by the pursuer of any process of cessio, the process may be sisted till the regulations have been duly complied with in all points, if it shall appear to the Sheriff, from the nature of the omission, that this can be still done, consistently with justice, and with the due execution of the Statute.

C. HOPE, *I.P.D.*

APPENDIX TO THE FOREGOING ACT OF SEDERUNT.

FORMS.

SCHEDULE (A.)

FORM OF PETITION.*

Unto the Honourable the Sheriff of the County of
the Petition of [*giving the full name and designation, and present place of residence, and specifying the jail, if the debtor has been or is incarcerated*];

Humbly sheweth,

That the petitioner has been charged, and that a warrant to imprison has been issued against him at the instance of , for not making payment of the sum of £ contained in a

[*Or*] That he is liable to imprisonment, under a small-debt decreet, obtained against him at the instance of
for the sum of £

[*Or*] That he is in prison, in respect of a civil debt, amounting to £ at the instance of

[*Or*] That he has been imprisoned, and afterwards liberated, in respect of a civil debt, amounting to £
at the instance of [*specifying the debt and the particular circumstances of its constitution, by bill, decreet, or otherwise*].

That the petitioner is unable to pay his debts, and is ready to surrender his whole means and estate for behoof of his creditors. That his inability to pay his debts has not been occasioned by fraud, but has arisen solely from misfortunes and losses, to be particularly specified in the state of his affairs, subscribed by himself, and to be produced in the hands of the Clerk of Court. That the following is a list of the petitioner's real or pretended creditors,—viz. [*stating their names on separate lines, with a progressive number for the sake of reference*].

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* The above form of petition is now held to be superseded by the General Form prescribed by 39 & 40 Vict. c. 70, s. 6 (*Crozier*, 15th June 1878). For form of a petition for cessio, *vide* form in Insolvency and Bankruptcy, No. V., *postea*.

That there is herewith produced the schedule of an expired charge for payment of the said debt. [*Or*] A copy, certified by the Clerk of the Small Debt Court, of the warrant on which he is liable to imprisonment. [*Or*] A certificate from the keeper of the prison of the imprisonment of the petitioner, and the date thereof, and of the liberation [*if such there were*].

That the petitioner is farther desirous to obtain a warrant of [*liberation and*] interim protection against the execution of diligence, and is ready to find sufficient caution, acted in the Sheriff Court Books of the county of to the amount of , for which will become his cautioner.

May it therefore please your Lordship to grant warrant for the requisite intimation or citation, and on the expiry of the *inducice*, and on the petitioner finding such caution, to grant authority for his liberation and interim protection against the execution of diligence; thereafter, on resuming consideration of this petition and advising the whole cause, to find that the petitioner is entitled to the benefit of the process of cessio bonorum, and to grant decreet accordingly, and to appoint such person as your Lordship shall think proper, trustee, who shall take the management and disposal of his estate for the general behoof of his creditors; all in terms of the Statute and Act of Sederunt made thereanent.

According to Justice, &c.

SCHEDULE (B.)

FORM OF BOND OF CAUTION.

I, A. B., do hereby, in terms of the 15th section of the Statute 6th & 7th Will. IV. chap. 56, and of an interlocutor of the Sheriff , of , dated , pronounced in the petition for the benefit of the process of cessio bonorum, presented to him in name of C. D. [*or*, in the petition of C. D., in the process of cessio bonorum at his instance, against* his creditors], judicially enact, bind, and oblige myself, my heirs,

* This where a separate petition is given in under the 15th section.

executors, and successors, as cautioner and surety for the said C. D., that he the said C. D. shall attend all diets of Court, whenever required, under the penalty of £ , and which, if forfeited, shall be divided among the creditors; and that diligence shall pass hereon for the same, at the instance of the Clerk of Court; and I the said hereby specially agree that [*here insert the* "Sheriff Clerk's office," *or some other place within the county*] shall be held as my domicile, to the effect of leaving there for me, all citations or other intimations in this cause, or that a letter with such citations or intimations, addressed , and sent through the post-office, shall be equal to a personal citation. In witness whereof, &c.

[*Or, if the parties prefer it, they can find caution in the usual terms of judicial caution acted in the Books of Court, thus*—]

At the day of , one thousand eight hundred and .

Appears A. B.,
and in terms of the 15th section of the Statute 6th & 7th Will IV. chap. 56, and of an interlocutor of the Sheriff of , dated , pronounced in the petition for the benefit of the process of cessio bonorum presented to him in the name of C. D. [*or*, in the petition of C. D., in the process of cessio bonorum at his instance, against* his creditors], hereby judicially enacts, binds, and obliges himself, his heirs, executors, and successors, as cautioner and surety, acted in the Sheriff Court Books of , for the said C. D., that the said C. D. shall attend all diets of Court, whenever required, under the penalty of £ , and which, if forfeited, shall be divided among the creditors; and that diligence shall pass hereon at the instance of the Clerk of Court; and the said hereby specially agrees that [*here insert the* "Sheriff Clerk's office," *or some other place within the county*] shall be held as his domicile, to the effect of leaving there for him all citations or other intimations in this cause, or that a letter with such citation or intimations, addressed and sent through the post-office, shall be equal to a personal citation.

[*If more cautioners than one bind themselves severally, or jointly and severally, the form will be varied accordingly.*]

* This where a separate petition is given in under the 15th section.

SCHEDULE (C.)

FORM OF OATH.

At , the day of , in presence of , Compeared A. B., who being solemnly sworn and examined, depones, That the state produced in process is a true and correct state of his affairs, to the best of the deponent's knowledge and belief. Depones, That he has no lands, heritages, debts, sums of money, goods or gear, belonging to him, other than what are specified in the said state, and in the disposition executed by him in this process [*if one shall have been required by the creditors*]. Depones, That he has made no disposition or other conveyance of his effects, or any part thereof, other than explained in the state of his affairs. Depones, That he has not put out of his hands any money, goods, or gear belonging to him; nor has he, to the prejudice of his creditors, cancelled, concealed, or away put, any writs or documents. All which he depones to be truth, as he shall answer to God.

C. HOPE, *I.P.D.*

EDINBURGH, 6*th June* 1839.

NOTES BY THE ACCOUNTANT IN BANKRUPTCY

FOR THE

Information and Guidance of Trustees in Processes of *Cessio Bonorum*, to which the provisions of the 167th Section of the Bankruptcy (Scotland) Act, 1856, are applicable.

I. It is enacted by the said section, that any "trustee or "trustees to whom the pursuer of a cessio shall grant a conveyance of his estate and effects for behoof of his creditors, "shall act under the supervision and control of the accountant, in like manner as the trustee under a sequestration, and "the accountant shall exercise the like powers and perform "the like duties as in that case, but always under the directions of the Court; for which purpose it shall be the duty of "every such trustee, or, failing him, of the Clerk to any such "process in the Court of Session, or of the Clerk of the Sheriff "Court in which the cessio has been granted, to transmit a "note of the same, and residence of such trustee, to the accountant, and the accountant shall prepare a list of such "processes, and shall require from such trustees, at the end of "each year, accounts of their intromissions, and report on the "same annually to either Division of the Court; and he shall "also bring before the Court any instance of malversation or "irregularity in such trustees, whereupon the Court shall be "entitled to inflict on them such censure or punishment as it "may deem just."

II. The trustees to whom conveyances have been granted, as above pointed out, are requested to report to the accountant the dates and particulars of such conveyances. In cases where there is no estate either present or prospective, or no estate which can be recovered, the trustee should report this to the accountant. Where there is any estate, and the trustee accepts office, the following notes will be applicable.

III. Trustees should, as soon as may be after their appointment, take possession of the estate and effects conveyed, and of the title-deeds, books, bills, vouchers, and other papers and documents; and it is desirable that they should make up an inventory and valuation of such estate and effects, and lodge a copy with the accountant not later than three months from the date of conveyance in their favour.

IV. The trustees are required, in terms of the Act, to give up to the accountant, at the end of each year, accounts of their intromissions. The first account should be made up to the 31st December of the year in which the conveyance has been granted, and the subsequent accounts at the 31st December yearly, until the estate is wound up. The accounts ought to be sent to the accountant within one month from the 31st December, with the vouchers and instructions thereof. The accountant does not at present suggest any particular form as applicable to these accounts; but the accounts (in whatever form they may be prepared by trustees) ought to contain distinct records of all the intromissions, and to exhibit the balances arising thereon from day to day. It is desirable that trustees should keep in view the provisions of the 82d and 83d sections of the Bankruptcy (Scotland) Act, 1856, in reference to the deposit in bank of moneys belonging to sequestrated estates. The former of these sections provides that the trustee "shall lodge all money which he shall receive in such "bank as the majority of the creditors in number and value "at any general meeting shall appoint, and failing such ap-"pointment, in any joint-stock bank of issue in Scotland "(provided that the bank be not one in which the trustee "shall be an acting partner, manager, or cashier)." The latter section imposes penalties if the trustee shall keep in his hands any sum exceeding £50, belonging to the estate, for more than ten days.

V. Trustees in cessios ought, where necessary, to advise with the creditors in regard to the disposal and management of the estate. The advice of the creditors may be obtained at a meeting called by the trustee for the purpose.

VI. It is desirable that the trustee should keep a sederunt-book, for the purpose of recording all proceedings necessary to give a correct view of the management of the estate and effects conveyed. Among the proceedings which may be recorded are the petition or summons raised by the bankrupt, containing the names and designations of the creditors (to which access may be had in the hands of the Sheriff-Clerk); an abstract of the conveyance to the trustee; the bankrupt's state of affairs; the trustee's inventory and valuation; states

of debts and schemes of division; minutes of meetings of creditors; and the trustee's accounts.

The above notes refer generally to the duties of trustees in processes of cessio; but the accountant is ready, where necessary, to communicate with trustees, and to give them such information and direction as may be required for their guidance in particular cases.

Office of Accountant in Bankruptcy,
New Register House, Edinburgh.

BANKRUPTCY (SCOTLAND) ACT, 1856.

CAP. LXXIX.

An Act to consolidate and amend the Laws relating to Bankruptcy in Scotland.—[29th July 1856.]

SECT. 1, 2, 3.

WHEREAS it is expedient to consolidate and amend the laws relating to Insolvency and Bankruptcy, and for regulating the Sequestration of Estates of Bankrupts, in Scotland: Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title, and commencement of Act.

I. This Act may be cited as the "Bankruptcy (Scotland) Act, 1856," and shall come into operation on and after the 1st day of November 1856.

54 G. 3, c. 137, 2 & 3 Vict. c. 41, and 16 & 17 Vict. c. 53 repealed.

II. The Acts passed in the Sessions of Parliament holden in the 54th year of the reign of his Majesty King George III., chapter 137, and in the 2d and 3d year of the reign of her present Majesty, chapter 41, and in the 16th and 17th year of the reign of her present Majesty, chapter 53, are hereby repealed; saving always their effect in regard to any act or deed done or granted prior to the date of this Act coming into operation (*a*).

(*a*) All prior sequestration statutes are now repealed.

Effect on existing sequestrations.

III. All sequestrations awarded on and after the said date (*a*), or proceedings occurring on or after the said date in sequestrations which have been awarded before it under former Acts, unless it be otherwise hereinafter provided, shall, if and so soon as an interlocutor to that effect pronounced by the

Lord Ordinary shall become final, or if and so soon as an interlocutor to that effect shall be pronounced by the Court (*b*), be regulated by this Act (*c*): Provided always, that until such interlocutor by the Lord Ordinary shall become final, or until such interlocutor shall be pronounced by the Court, proceedings in sequestrations awarded before the said date shall be conducted as if the Acts hereby repealed were still in force, and such proceedings shall thereon be as valid as if the said Acts were unrepealed. SECT. 4.

(*a*) In sequestrations after 1st November, a special interlocutor to the effect that they are to be conducted under this Act is not necessary. (*Drummond*, 14th Nov. 1856.)

(*b*) This means the Court of Session.

(*c*) In a sequestration under 54 Geo. III. c. 137, where the estate was distributed and trustee discharged many years ago, the application by the bankrupt to have the proceedings with the view to a discharge conducted under this Act, was ordered to be intimated on the walls, in the minute-books for eight days, and in the 'Edinburgh Gazette' for ten days, and thereafter the prayer was granted. (*Mabon*, 16th March 1858.)

IV. In this Act, the words "Lord Ordinary" shall mean the Lord Ordinary officiating on the Bills in the Court of Session; the word "Deliverance" shall include any order, warrant, judgment, decision, interlocutor, or decree; the words "Clerk or Officer of the Court of Session" shall include the keeper of the Register of Abbreviates of Adjudications; the word "Accountant" shall mean the Accountant in Bankruptcy appointed under this Act; the word "Gazette" shall signify the 'Edinburgh Gazette;" the word "Commissioners" shall mean a majority of the commissioners elected under the provisions of this Act; the words "Property" and "Estate" shall, when not expressly restricted, include every kind of property, heritable or moveable, wherever situated, and all rights, powers, and interests therein capable of legal alienation, or of being affected by diligence or attached for debt; the word "Moveable" shall include personal, and the word "Heritable" shall include real; the word "Security" shall include securities, heritable or moveable, and rights of lien, retention, or preference, and conveyances thereof and any part thereof; the word "Sheriff" shall include Sheriff-Substitute, unless the context indicate the contrary; the word "Successors" shall include all persons who have succeeded to any property which was vested in a party deceased at the time of his death, whether as heirs, heirs apparent, trustees under voluntary conveyances, representatives by deed or otherwise, executors, administrators, or nearest of kin, or as assignees, or legatees, and shall also include singular successors where they have acquired the right; the word

Construction and meaning of certain words.

SECT. 5. "Vote" shall, as well as the ordinary meaning thereof, include a consent to any offer of composition, and to a discharge of the debtor, and also a dissent from such offer or discharge; the word "Company" shall include bodies corporate, politic, or collegiate, and partnerships; the words "Partner of a Company" shall include the members of such bodies; the words "Debtor," "Bankrupt," and "Creditor," shall apply to companies as well as individuals, and shall include aliens, unless in this, and also in the other cases herein-above specified, a different construction shall be provided (*a*).

(*a*) 1. The word "Month" means calendar month. (*Smith*, 10th Feb. 1826. 13 & 14 Vict. c. 21, s. 4.)

2. The singular includes the plural, and the plural the singular; and the male includes the female. (13 & 14 Vict. c. 21, s. 4.)

Reckoning of time.

V. Periods of time in this Act shall be reckoned exclusive of the day from which such period is directed to run (*a*).

(*a*) There is often much subtlety involved, and a great deal of ingenious speculation indulged in the computation of time. It arises from dealing with time, not by points or terms, but by periods or portions. It is usual in statutes to fix time by the day or week, and so on, and not by the arrival of such time-marks as sunrise or noon; and hence questions have arisen, whether the day or week is to be excluded or included in the computation—whether it is to be held as finished or merely begun. The above section puts an end to all such questions under the present Act. Thus, when parties, as in s. 69, are to lodge notes of objections *within* four days, this is held to mean four free days —not counting the day from which the period runs, but beginning next day and running on till the end of the last hour of the fourth. Again, where, as in s. 70, the trustee remains for three months furth of Scotland, he may be removed, this obviously means three whole months—not counting the day from which the period runs, as directed in the above section. Farther, where, as in s. 67, a meeting is to be held *not earlier than* six, and *not later than* twelve days, this plainly means that six free days must elapse, and that twelve days must not elapse before the meeting is called; as, where a day or a week is mentioned, it must be understood to mean a whole day or week—beginning, middle, and end—and therefore the meeting must not be called sooner than the end of the sixth, nor later than the end of the twelfth day, not including, in terms of the above section, the day from which the computation begins. Lastly, where, as in s. 83, the trustee is not to retain a certain sum in his hands *for more than* ten days, this, by the above section, will mean that ten free days must expire ere the penalty attaches, not including the day on which the reckoning begins.

Hitherto it has been difficult to know, in certain cases of bankruptcy, whether the day of the bankruptcy or the date of the deed or diligence was to be excluded; for it was always agreed that *both* were not to be included (*Scott*, *infra*). Professor Bell held, that the day from which the computation begins is not counted as a day, but that the sixty days therefrom expire the moment the sixtieth day begins (2 B. C. 179); but some hold that the day from which the computation begins *is* counted as the first day, but that the sixtieth must be completed.

Two cases may be cited. A bill was endorsed on the 31st March, and the notour bankruptcy took place on 30th May. It was held that the sixty days had expired. The words of the Act 1696, on which the action was raised, are, "either at or after his becoming bankrupt, or in the space of sixty days before" (*Blaikie*, 21st Jan. 1809, F. C.) A poinding was executed on 15th August, and the notour bankruptcy took place on 14th October. It was held that the sixty days had elapsed, and that the poinding was not reducible. This was decided under s. 5 of 54 Geo. III. c. 137, the words of which are, "within sixty days before the bankruptcy" (*Scott*, 7th Dec. 1839). The case of Blaikie will still stand good, for the above section does not apply to reductions under 1696. But the case of Scott is now a questionable decision; for as by the above section the day of the bankruptcy would not be counted a day, and therefore as the poinding was *within* sixty free days from that date—viz., on the 15th of August, which was the sixtieth day—it would now seem to be reducible. SECT. 6, 7.

VI. The date of a deed under this Act, or under the Act passed in the Parliament of Scotland held in the year 1696, chapter 5, shall be the date of recording of the sasine, where sasine is requisite, and, in other cases, of registration of the deed, or of delivery, or of intimation, or of such other proceeding as shall in the particular case be requisite for rendering such deed completely effectual. Dates of deeds.

Constitution and Effects of Notour Bankruptcy.

VII. Notour bankruptcy shall be constituted by the following circumstances:— Notour bankruptcy of individuals.

1st, By sequestration, or by the issuing of an adjudication of bankruptcy in England or Ireland; or

2d, By insolvency (*a*), concurring either—

A. With a duly executed charge for payment (*b*), followed, where imprisonment is competent, by imprisonment, or formal and regular apprehension of the debtor (*c*), or by his flight or absconding from diligence (*d*), or retreat to the Sanctuary, or forcible defending of his person against diligence, or where imprisonment is incompetent (*e*), or impossible (*f*), by execution of arrestment of any of the debtor's effects not loosed or discharged for fifteen days (*g*), or by execution of poinding of any of his moveables, or by decree of adjudication of any part of his heritable estate for payment or in security; or

B. With sale of any effects belonging to the debtor under a poinding (*h*), or under a sequestration for rent, or with his retiring to the Sanctuary for twenty-four hours (*i*), or with his making application for the benefit of cessio bonorum (*j*).

(*a*) Insolvency is presumed if other requisites concur. (*Knowles*, 1st Feb. 1865, 2 B. C. 317.)

SECT. 7.

(*b*) It is of no consequence what is the amount of the debt. In one case a caption for a debt, "deducting such sums as can be shown to be paid," was sustained. (*Taylor*, Feb. 1819, 2 B. C. 170.)

(*c*) 1. It is not necessary that the officer use the blazon or wand of peace. (*Scott*, 18th Jan. 1855.)

2. Imprisonment or apprehension may be proved by parole evidence (*Richmond*, 14th Jan. 1789, D. 1113; *Scott, supra*); but not the other requisites of notour bankruptcy (*Whyte*, 20th March 1817, 1 Mur. 237).

(*d*) 1. The proper evidence of the debtor's flight is an execution of search by the officer. A sentence of fugitation held not enough in *Marshall*, 11th Dec. 1834, as it proved his flight from a different cause than to avoid diligence for debt.

2. It is difficult to say what circumstances will amount to flight from diligence. One act of absence from home was held not enough (*Finlay*, 21st Jan. 1767, D. 1106). In another case one search was held enough, where the insolvency was notorious (*Ferguson*, 1771, D. 1109). In a third case, one execution of search was held sufficient evidence of absconding, unless redargued by other evidence (*Carron Company*, 4th July 1775, D. 1110). In another case it was observed that absence may be explained (*Spedding*, 9th August 1785, D. 1113). In *Davis*, 31st May 1867, it was held that an execution of search at the house of the debtor's father, which the debtor only visited occasionally, and where he was not residing at the time of the search, was not enough. But held that the execution is *prima facie* evidence of absconding from diligence, and an averment that the debtor had openly left the country to fill a permanent situation abroad was not relevant to overcome the presumption (*M'Bean*, 24th Oct. 1868).

(*e*) This refers to—1. Peers; 2. Members of the House of Commons during the sitting of Parliament, and for forty days prior and subsequent to its meeting; 3. Pupils; 4. Lunatics; 5. Wives, unless in business, and their husbands are abroad; 6. Persons under protection of a decree of cessio; 7. Debtors in the Abbey; 8. Debtors in sums under £8, 6s. 8d. All such persons may of course be rendered notour bankrupt. (2 B. C. 166.)

(*f*) This means where the debtor is out of the country, or where it is an incorporation. (2 B. C. 167.)

(*g*) The notour bankruptcy begins at the expiration of the fifteen days. (*Brown*, 1st Feb. 1849; *vide* s. 9.)

(*h*) It seems enough that a sale take place under a Small Debt decree without a charge (which is unnecessary where the decree is *in foro*), while imprisonment under the same decree would not be an act of notour bankruptcy.

(*i*) With reference to retiring to the Sanctuary inferring notour bankruptcy, it is to be remarked, that the retreat must continue for twenty-four hours, while under clause A it is enough that there simply be a retreat to the Sanctuary, which has been held to be sufficient, even although the debtor had not been entered in the clerk's book of the Abbey (*Dickson*, 3d Dec. 1751, D. 1101). The reason why retiring to the Sanctuary for twenty-four hours is sufficient, without charge on a diligence, seems to be, that as a debtor cannot remain in the Abbey under protection longer than twenty-four hours without booking, the act of booking is an act of so deliberate a nature, and so indubitable in its meaning, that it may fairly justify sequestration.

(*f*) The granting of a trust deed is not an act of notour bankruptcy. (*Watson*, 24th Feb. 1769, D. 1220.) SECT. 8, 9, 10.

VIII. Notour bankruptcy of a company shall be constituted either in any of the foregoing ways, or by any of the partners being rendered notour bankrupt for a company debt (*a*). Of a company.

(*a*) The word "company" includes bodies corporate, politic, or collegiate, and partnerships (s. 4). Where members of such bodies are not subject to imprisonment, then the notour bankruptcy must be constituted by any of the other alternatives (*vide* s. 7, note *f*). It has been held that an incorporation could not be made notour bankrupt under the Act 1696, c. 5 (*Shoemakers of Canongate*, 5th June 1797, D. 1210), nor under 54 Geo. III. c. 137 (*Hogan*, 19th Feb. 1853), but the above section will apply to incorporations.

IX. Notour bankruptcy shall be held to commence from the time when its several requisites concur, and when it has once been constituted shall continue, in case of a sequestration, till the debtor shall obtain his discharge, and in other cases until insolvency cease (*a*), without prejudice to notour bankruptcy being anew constituted within such period (*b*). Commencement of notour bankruptcy.

(*a*) Payment of the debt of the creditor who renders the debtor notour bankrupt, does not take away the effects of the notour bankruptcy (*M'Kellar's Creditors*, 1st March 1791, D. 1114, 2 B. C. 180), except that it may prevent sequestration (s. 30, *infra*).

(*b*) At first sight it might seem unnecessary to constitute notour bankruptcy of new while the debtor was still remaining in a state of notour bankruptcy; but it will be observed—1. That to equalise arrestments it is necessary that notour bankruptcy be *constituted* within sixty days after the arrestment, or four months before it (s. 12, *infra*); 2. That the same is necessary in the case of poindings; 3. That a sequestration can only be applied for within four months of the date of the bankruptcy—obviously meaning its constitution (s. 15). The continued state of notour bankruptcy is, however, of use in the case of reducing preferences, for the Act 1696, c. 5, applies to deeds granted by the debtor, "either at or after his becoming bankrupt." It has accordingly been long ago held that a preference is reducible, although it has been granted some years after the constitution of bankruptcy, and that the debtor's incapacity still continues until he returns to a state of solvency. (*M'Kellar's Creditors, supra.*)

X. Deeds made void by this Act (*a*), and all alienations of property by a party insolvent or notour bankrupt, which are voidable by statute or at common law, may be set aside either by way of action or exception (*b*), and a decree setting aside the deed by exception shall have the like effect, as to the party objecting to the deed, as if such decree were given in an action at his instance (*c*). Deeds made void by this Act, and alienations of property voidable, may be set aside by way of action, &c.

(*a*) The deeds here referred to seem to be those mentioned in s. 111 and 150.

(*b*) *Vide M'Kenzie*, 26th May 1868.

Sect. 11, 12.

(*c*) The remedy of setting aside deeds and alienations, whether by action or exception, here given, can now be followed out in the Sheriff Court; for it is enacted that "the tenth section of the first herein-before recited Act shall be taken to apply to actions and exceptions as well in the ordinary Court of the Sheriff as in the Court of Session" (Act 1857, s. 9, *postea*). But held that while this may permit petitory actions for the purpose, it does not authorise actions of reduction in the Sheriff Court (*Dickson*, 7th June 1866; *Moroney*, 5th Nov. 1867). Where the deed, therefore, is a title to a heritable estate, it would appear that it must be reduced in the Court of Session (*Dickson*, *supra*).

May be by trustee.

XI. The trustee on a sequestrated estate under this Act shall be entitled to set aside any such deed or alienation for behoof of the whole body of creditors (*a*), and in so doing shall be entitled to the benefit of any presumption which would have been competent to any creditor (*b*).

(*a*) 1. This means creditors entitled to be ranked, s. 121.

2. Reductions of such deeds under the Statutes 1621 and 1696 are only competent to those who are creditors prior to the granting of the deeds. In the case of gratuitous alienations under 1621, it has long ago been decided that posterior creditors have no title to reduce (*Pollock's Creditors*, 21st Jan. 1669, D. 1002; *Edmond*, 1st June 1853; E. 4. 1. 44). In the case of preferences under 1696, it was likewise held that posterior creditors could not reduce (*Man.*, 25th July 1702, D. 1006; *Barclay*, 19th Nov. 1783, F. C., 2 B. C. 209). A trustee under a sequestration has hitherto been entitled to prosecute such reductions on behalf of those who were prior creditors, but not for those who were posterior (*Mansfield*, 13th Feb. 1833; *Horne*, 12th Feb. 1847; *M'Cowan*, 6th July 1852). By the above section it would appear that all the creditors, both prior and posterior to the deed under challenge, have now the same interest.

(*b*) The presumptions to which the above section alludes appear to be those arising under 1621. "1. That in all challenges, after insolvency, of deeds granted to conjunct and confident persons subsequently to the challenger's debt, the insolvency shall, *presumptione juris*, be carried back to the date of the deed; and, 2. That in such cases it shall also be presumed that the deed was granted without value." (2 B. C. 183.)

Pari Passu Ranking of Diligence.

Arrestments and poindings.

XII. Arrestments and poindings which shall have been used within sixty days (*a*) prior to the constitution (*b*) of notour bankruptcy (*c*), or within four months thereafter, shall be ranked *pari passu* as if they had all been used of the same date; provided, that if such arrestments are used on the dependence of an action, or on an illiquid debt, they be followed up (*d*) without undue delay; provided further, that any creditor judicially producing in a process (*e*) relative to the subject of such arrestment or poinding liquid (*f*) grounds of debt or decree of payment within such period shall be entitled to rank as if he had executed an arrestment or a poinding; and in case the first or any subsequent arrester shall, in the mean-

time, obtain a decree of forthcoming and preference, and thereupon shall recover payment, or a poinding creditor shall carry through a sale, he shall be accountable for the sum recovered to those who, by virtue of this Act, may be eventually found to have a right to a ranking *pari passu* thereon, and shall be liable to an action at their instance for payment to them proportionally (*g*), after allowing out of the fund the expense of recovering the same (*h*); and if any arrestments be used for attaching the same effects after the period of four months subsequent to the bankruptcy, such arrestments shall not compete with those used within the said periods prior or subsequent thereto, but may rank with each other on any reversion of the fund attached, according to law and practice. SECT. 13.

(*a*) *Vide* s. 5, as to computation of the sixty days.

(*b*) 1. The power of acquiring preferences by such *legal* diligence again arises at the expiration of the four months from the constitution of notour bankruptcy; but *voluntary* preferences under 1696 can never be so acquired, until the notour bankruptcy is removed by a return to solvency. (*M'Kellar's Creditors*, 1st March 1791, D. 1114.)

2. *Vide* s. 7 and 9 as to the constitution of notour bankruptcy.

(*c*) If the constitution of notour bankruptcy is by sequestration, the arrestments and poindings within sixty days are not effectual, and the trustee is entitled to the fund or effects or their proceeds (s. 108).

(*d*) The arrestments so used are to be followed up by proceedings to obtain decree. (*Vide* 54 Geo. III. c. 137, s. 2.)

(*e*) This means a forthcoming, or process of poinding and sale, or a multiplepoinding.

(*f*) A liquid ground of debt means a probative writ—*e.g.*, a bond or bill. (*Vide* s. 14, note *d.*)

(*g*) A multiplepoinding does not seem incompetent.

(*h*) The "expense of recovering the same" appears limited to the expense of the poinding or arrestment, and not of the antecedent steps of process or diligence, which, although necessary to the final step, may have been raised for quite a different purpose than for arresting or poinding (*vide* s. 108 and 110, *infra*). It does not appear that the expenses of recovering the fund or proceeds from the arresting or poinding creditor is provided for, though, if an action of multiplepoinding for dividing the fund were raised, the expense of it would doubtless be allowed from the fund. There is no provision for payment of the expenses of constituting the notour bankruptcy to the creditor who incurred them.

Sequestration, when competent.

Sequestration may be awarded in cases herein enumerated.

XIII. Sequestration may be awarded of the estate of any person (*a*) in the following cases:

1st, In the case of a living debtor (*b*) subject to the jurisdiction (*c*) of the Supreme Courts of Scotland:

SECT. 13.

A. On his own petition (*d*), with the concurrence of a creditor or creditors (*e*), qualified as herein-after mentioned (*f*):

B. On the petition of a creditor or creditors, qualified as herein-after mentioned, provided the debtor be notour bankrupt (*g*), and have within a year (*h*) before the date of the presentation of the petition resided or had a dwelling-house or place of business in Scotland; or otherwise, in the case of a company (*i*) being notour bankrupt, as herein-before provided, if it have within such time carried on business in Scotland, and any partner have so resided or had a dwelling-house, or if the company have had a place of business in Scotland:

Sequestration of deceased debtor.

2d, In the case of a deceased debtor who at the date of his death was subject to the jurisdiction (*j*) of the Supreme Courts of Scotland:

A. On the petition of a mandatory to whom he had granted a mandate to apply for sequestration:

B. On the petition of a creditor or creditors qualified as hereinafter mentioned.

(*a*) By former Statutes the privilege of sequestration was confined to the trading classes, but it is now unlimited, and so any who can incur debt may now be sequestrated. Minors, lunatics, and wives, in certain cases, may all incur debt, and be rendered notour bankrupt (2 B. C. 700), and are now subject to sequestration. It was so held in the case of a royal burgh. (*Wotherspoon*, 19th Dec. 1863.)

(*b*) 1. The word debtor includes companies and aliens (s. 4).

2. Where the oath only stated the debt against a company, sequestration was refused by the Lord Ordinary against the partners as such, and as individuals. (*Bellis*, 3d Dec. 1831.)

(*c*) The word "jurisdiction" may be interpreted in a variety of ways. It may mean jurisdiction *quoad* the person or the property, or the person in respect of the property. It may mean jurisdiction *quoad omnia*, or only a particular estate. It may be jurisdiction so as to regulate succession, or merely to authorise an action or diligence. But in questions between debtor and creditor, jurisdiction obviously means that jurisdiction which is the foundation for citation in a personal action, or the execution of diligence. It may be founded in four ways: 1. By the debtor deliberately establishing a domicile for himself (E. 1. 2. 16). 2. By a residence anywhere in Scotland for forty days continuously (*Joel*, 10th June 1859). This was the case of an Englishman who came to Scotland for no other purpose than to be sequestrated. 3. By the ownership of heritage. 4. But it is a question whether it can be founded by the ownership of moveables under arrestment *jurisdictionis fundandæ causa*. In these two last cases the debtor must also, some time within a year before the presentation of the petition (where he is not the petitioner), have resided, or had a dwelling-house or place of business, in Scotland (s. 13. See *Croil*, 3d March 1863).

(*d*) It is not necessary that the debtor, if he is himself the applicant, be notour bankrupt, nor even insolvent. Neither are these necessary in the case of a deceased debtor being sequestrated (s. 13 [2d part], 15, and 24). SECT. 13.

(*e*) 1. An oath by a trustee bad, as he did not describe himself as trustee. (*Fulton*, 9th July 1816.)

2. An affidavit to a debt due to a bankrupt estate must be sworn by the trustee and not by the bankrupt. (*Berry*, 1st Feb. 1825, aff. 25th April 1826.)

3. A party not entitled to act on a decree for costs which is extracted in name of his law agents, and which they are enforcing. (*Black*, 29th June 1825.)

4. Observed that a party may claim in two characters—*i.e.*, as trustee and assignee—but it must be good on either ground. (*Taylor*, 11th Jan. 1848.)

5. Where a promissory-note is granted to A. B. as agent for C. D., the proper party to depone is A. B. (*Wixon*, 22d June 1849.)

6. Drawer of a bill can prove his debt against the estate by bill, though there be a blank indorsation unscored, but which he was entitled to score. (*Aitken*, 28th Feb. 1852.)

7. It is no objection to a vote on bills that they remain indorsed to third parties. (*Haine*, 13th Dec. 1853.)

(8.) A creditor, *qua* factor appointed by the creditors in a sequestration, claimed on the estate of the trustee who was sequestrated: claim sustained (*Leck*, 7th July 1855). Observed that his claim *qua* one of the creditors would have been good.

9. The word "creditor" includes companies and aliens (s. 4).

(*f*) *Vide* QUALIFICATIONS OF CREDITORS.

(*g*) This must be read along with s. 7, 8, 9, and 15. The time within which the creditor may apply for sequestration is limited to four months after an act of notour bankruptcy. It is no objection to the application for sequestration that the diligence upon which notour bankruptcy followed has been brought under review by suspension (*Sutherland*, 11th Feb. 1843), nor that it has been appealed to House of Lords (*Kerr*, 20th Feb. 1829, aff. 9th Dec. 1830, 4 W. S. 441).

(*h*) The expression "within a year" means residence for any period within the preceding twelve months. This refers to the jurisdiction of the Court of Session. But in the case of the Sheriff's jurisdiction, it is necessary that the debtor have resided or carried on business for the year preceding the application for sequestration or the occurrence of death (s. 18, and notes).

(*i*) 1. Where a party carried on business in his own name, and granted a bill in that capacity, and it was alleged that another party was a partner in his business, which was denied, and sequestration was applied for against both parties: held that the process of sequestration was not a competent process for determining the question of the disputed partnership. (*M'Gavin*, 11th Feb. 1854.)

2. The word "company" includes bodies corporate, politic, collegiate, and partnerships (s. 4).

(*j*) It almost appears from this part of the section that the only requisites for the sequestration of a deceased debtor at the instance of a creditor are: 1. Jurisdiction over the debtor by the Supreme Courts of Scotland at the time of his death; and, 2. The usual qualifications of the creditor. But s. 24 would seem to show that some farther requisites have been intended, for it provides that

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the creditor must in his oath specify the debtor's residence, dwelling-house, or place of business in Scotland at the time of his death, and whether he was then owner of estates in Scotland. There is no mention of these in the above section, and consequently they do not appear to be essentials of jurisdiction (*vide* s. 24, note *b*). Neither insolvency nor notour bankruptcy is necessary unless sequestration is wanted forthwith (s. 15).

Qualification of creditors, petitioning or concurring.

XIV. Petitions for sequestration may be at the instance or with the concurrence of any one (*a*) creditor (*b*) whose debt (*c*) amounts to not less than fifty pounds, or of any two creditors whose debts together amount to not less than seventy pounds, or any three or more creditors whose debts together amount to not less than one hundred pounds, whether such debts are liquid or illiquid, provided they are not contingent (*d*).

(*a*) It is of no consequence that the creditor holds the debt in *two* capacities, partly in his own right and partly as assignee. (*Robb*, 28th May 1830, and 9th July 1830, aff. 3d Oct. 1831, 5 W. S. 740.)

(*b*) The term "creditor" includes companies and aliens (s. 4).

(*c*) *Amount of Debt*—

1. The word "debt" includes principal and interest (s. 52). It also includes exchange and re-exchange on a bill of exchange; also expenses, if precisely ascertained (2 B. C. 321).

2. Where debtor has incurred debt abroad, and returned to Scotland, the creditor is not bound to deduct difference of exchange. (*Paul*, 13th Feb. 1834, aff. 14th June 1834, 7 W. S. 462.)

3. As to interest or discount on a future debt being deducted, there is no provision in the Act anent such debts for petitioning as there is for voting purposes (s. 52).

4. The creditor may claim on full amount of debt, though purchased by him for a smaller sum. (*Robb, supra.*)

5. If debt is £50 when petition presented, and a portion afterwards paid by a cautioner, still creditor may insist for sequestration. (*Allan*, 28th Nov. 1840.)

6. As to extent of inquiry into debt at this stage, *vide* s. 30 and 58, and notes.

7. As to evidence of debt, *vide* EVIDENCE OF CREDITORS' QUALIFICATIONS.

(*d*) The term "liquid" is often loosely used by law-writers. Where a debt is not liquid, it sometimes means that it is not a money debt, sometimes that it is not constituted, sometimes that the amount is not fixed; but in matters of petitioning or voting in sequestrations a liquid debt means one constituted by writing or decree (54 Geo. III. c. 137, s. 15; B. C. on 2 & 3 Vict. c. 41, p. 134). All other debts are illiquid, and of such the most common are those founded on open accounts, but occasionally on statements of intromissions. These are sufficient grounds for petitioning or voting (*vide* s. 49, and notes). But if these debts have anything contingent about them, they are not valid for petitioning. The contingency or uncertainty may exist in five ways: 1. As to the *debtor*, in the case of a cautioner in a bond or the drawer of a bill becoming the debtor where principal or acceptor fails; 2. As to the *creditor*, in the case of one of the payees in a policy payable to the survivor of two persons; 3. As to the *debt*, in the case of a claim on a marine or fire policy; 4. As to the *time* of payment in the case of creditors in a policy payable at the debtor's

death ; or, 5. As to the *amount* in the case of damages for injuries not fixed by a jury or otherwise. (*Vide* s. 53, and notes, as to voting, &c., on such debts.) SECT. 15, 16.

XV. Petitions for sequestration, presented without the concurrence of the debtor, he being in life, shall be competent only within four months (*a*) of the date (*b*) of the debtor's notour bankruptcy (*c*); and petitions for sequestration of the estates of a deceased debtor at the instance of a creditor may be presented at any time after the debtor's death (*d*), but no sequestration shall be awarded until the expiration of six months (*a*) from the debtor's death (*e*), unless he was at the time of his death notour bankrupt, or unless his successors (*f*) shall concur (*g*) in the petition or renounce the succession, in which several cases sequestration shall forthwith be awarded ; and in all other cases falling under this Act a petition for sequestration shall be competent at any time, and sequestration may follow thereon in manner herein-after directed (*h*). Within what date petitions may be presented.

(*a*) As to mode of computing time, *vide* s. 5.

(*b*) *Vide* s. 9.

(*c*) This means the *constitution* of notour bankruptcy ; but it may be constituted any number of times (s. 9), and sequestration may be applied for within four months after any act of bankruptcy (*vide Balfour*, 20th Feb. 1841).

(*d*) Upon presenting the petition a deliverance proceeds (s. 26), and that deliverance is the date of the sequestration (s. 42).

(*e*) It would seem that the delay of six months in awarding sequestration of the estates of a deceased person, refers only to applications by a creditor, and not to those by a mandatory under clause A of 2d branch of s. 13.

(*f*) *Vide* s. 4 for interpretation of "successor," also s. 29, note (*b*).

(*g*) The concurrence seems competent after presentation of the petition as well as before it.

(*h*) *Vide* s. 29 and 30. The only other cases are these—1. The case of the bankrupt being the petitioner; and, 2. The case of the petitioner being a mandatory if the debtor is dead.

Interim Preservation of Estate.

XVI. It shall be competent for the Court to which a petition for sequestration is presented, whether sequestration can forthwith be awarded or not (*a*), on special application by a creditor (*b*), either in such petition or by a separate petition, with or without citation to other parties interested (*c*), as the said Court may deem necessary, or without such special application if the Court think proper, to take immediate measures for the preservation of the estate, either by the appointment of a judicial factor, who shall find such caution as may be deemed necessary, with the powers necessary for such pre- Court may take measures to preserve estate before sequestration.

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servation (*d*), including the power to recover debts, or by such other proceedings as may be requisite (*e*); and such interim appointments or proceedings shall be carried into immediate effect; but if the same have been made or ordered by the Sheriff (*f*), they may be recalled by the Court of Session, on appeal taken, in manner herein-after directed (*g*).

(*a*) Held competent to appoint a judicial factor after sequestration is awarded. (*Partridge*, 9th Dec. 1873.)

(*b*) An oath by the creditor and vouchers are necessary (s. 50; *vide* s. 49, note *b*.)

(*c*) It is usual to cite the bankrupt or any third party in possession on a short *inducice*, if there is to be *dispossession* of any kind enforced, but not in the case of there being any estate abandoned which it is expedient to look after.

(*d*) By s. 17 there is provision made for the simple custody or keeping of the estate; but the above section allows measures to be taken for its preservation, which includes the act of preventing dilapidation, such as the selling of perishable goods, the carrying on of a work, or the completion of a contract. The judicial factor may also be called on to exercise the right of stopping goods *in transitu*, of removing tenants, and claiming and acting in other sequestrations. (2 B. C. 361; *Crawford*, 24th Nov. 1827; *Malcolm*, 26th June 1828.)

(*e*) This would seem to authorise security to be taken generally for the safety of the estate.

(*f*) This means either Sheriff or Sheriff-Substitute (s. 4; *vide* s. 170, note *e*).

(*g*) 1. *Vide* s. 170, as to mode of appeal.
2. The Court which appoints the factor may also exoner him, and order his bond to be given up. (*Esson*, 14th Feb. 1842.)
3. As to calling him to account, *vide* s. 86.

After sequestration bankrupt's papers may be sealed up.

XVII. The Sheriff (*a*) shall have power, upon cause shown by any creditor, or without any application, if he shall think fit, at any time after the sequestration and before the election of a trustee, to cause to be sealed up and put under safe custody the books and papers of the bankrupt, and to lock up his shop, warehouse, or other repositories, and to keep the keys thereof till a trustee is elected and confirmed.

(*a*) This means Sheriff or Sheriff-Substitute (s. 4).

Forum.

Courts for awarding sequestration.

XVIII. Sequestration may be awarded either by the Court of Session or by the Sheriff (*a*) of any county in which the debtor, for the year preceding the date of the petition (*b*), has resided or carried on business; provided, that no sequestration shall be awarded by any Court after production of evidence that a sequestration has already been awarded in another Court (*c*), and is still undischarged.

(*a*) 1. The word "Sheriff" includes Sheriff-Substitute (s. 4; *vide* s. 170, note *e*). SECT. 19.

2. In regard to jurisdiction, the tendency of recent decisions is to fix that in questions not of an ordinary but of an exceptional kind, it is the function of the Court of Session, by virtue of its *nobile officium*, to grant redress (*vide* s. 74, note *j*; and s. 72, note *b*).

3. As to *forms of procedure* in the Sheriff Court, there are no general enactments in the Statute, though there are some special directions as to appeals and minutes (s. 169 and 170), and the like. No doubt the ordinary forms of process and rules of procedure of the Sheriff Court will apply, unless where the Act has particular provision on the subject—just as in the case of the Bill Chamber with regard to processes originating in the Court of Session (s. 43, note *b*). But with regard to the *style of writs* commonly used in bankruptcy, there is perhaps a distinction to be drawn between proceedings before the Sheriff under his *ordinary*, and those before him under his *statutory* jurisdiction. In the former class of cases, no doubt the form of petition prescribed by the "Sheriff Court (Scotland) Act, 1876," will apply, as by s. 6 it is directed to apply to "every action in the ordinary Sheriff Court." Thus actions to set aside alienations under the Acts 1621 and 1696 will come under this rule. But in the latter class of proceedings under the Sequestration Act 1856, where the jurisdiction is entirely statutory, then it would rather appear that the form in use since the passing of the Sheriff Court Act 1853 (16 & 17 Vict. c. 80) falls to be adopted, as it is a form directed to be used in the case of "all applications before the Sheriff" (s. 7).

(*b*) "Sequestration, in the case of a deceased debtor, may be awarded by the Court of Session or by the Sheriff of the county in which the debtor, for the year *preceding his death*, had resided or carried on business." (Act 1857, s. 2, *postea*.)

(*c*) This does not seem to prohibit a second sequestration in the same Court. The object of this and the following section appears to be the confining of all the sequestrations of the same person to one Court.

Later sequestrations to be remitted to the first in date.

XIX. When sequestration has been awarded against a debtor by the Sheriffs of two or more counties (*a*), the later sequestration or sequestrations shall, on production of a certificate by the Sheriff Clerk of the county in which the sequestration first in date was awarded, setting forth the date of such sequestration, be remitted to the Sheriff of such county; and where all the sequestrations are of the same date, any one may be brought by appeal at any time before either Division of the Court of Session or Lord Ordinary; and on such appeal, or when a sequestration has been awarded by the Court of Session alone, or by the Court of Session and also by one or more Sheriff Courts, the Court of Session or Lord Ordinary shall remit the sequestration to such Sheriff Court as in the whole circumstances they or he shall deem expedient (*b*); and a notice of such remit shall be inserted in the Gazette within four days after such remit shall have been made (*c*): Provided always, that in any case in which the Sheriff has refused to

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sequestrate, it shall be competent to present a petition for sequestration to the Court of Session notwithstanding such judgment of refusal (*d*).

(*a*) 1. As to competition between two sets of creditors, *vide* s. 103, note *e*.
2. "Sheriff" includes "Sheriff-Substitute" (s. 4; *vide* s. 170, note *e*).

(*b*) 1. Where bankrupt designed as "William Henry Cole, gentleman, sometime residing at No. 9 Spencer Villa, Putney, in the county of Surrey, and now residing in Stornoway, in the island of Lewis, and county of Ross," with concurrence of a creditor resident in London, the process remitted to the Sheriff of Edinburgh. (*Cole*, 17th March 1860.)
2. The Court of Session may recall one of the sequestrations where more than one were awarded. (*Kellock*, 14th Dec. 1875.)

(*c*) In the event of a remit by a Sheriff or Sheriffs, a notice in the Gazette is also to be given (Act 1857, s. 3, *postea*). The "Gazette" means the 'Edinburgh Gazette' (s. 4).

(*d*) It would be hazardous to make a second application in a Sheriff Court, in case the objection of *res judicata* might be held to apply.

No proceeding under order of Sheriff to be effectual after appeal, except for preservation of estate.

XX. It shall be competent in such case for each Sheriff (*a*) awarding sequestration to take such measures (*b*) in the meantime as may be necessary for preserving the debtor's estate and effects within his jurisdiction, under the provisions of this Act; but no other orders given by any Sheriff on or after awarding sequestration, and no proceedings of creditors or others in pursuance thereof, excepting orders given by the Sheriff before whom the sequestration comes to depend, shall be of any force or effect from and after the date of such appeal, or of sequestration by the Court of Session.

(*a*) *Vide* s. 170, note *e*, for interpretation of "Sheriff."

(*b*) *Vide* s. 16, as to the nature of the measures to be taken.

Form of Petition, and Productions therewith.

Form of petition.

XXI. Petitions (*a*) for sequestration in the Court of Session shall be made to the Lord Ordinary, and be signed by the petitioner, or his counsel or agent (*b*), and the Division of the Court to which the sequestration is appropriated shall be marked thereon, and in the Sheriff Court shall be signed by the petitioner or his agent, and in either Court, in petitions at the instance of the debtor, but not signed by him, there shall be produced therewith a mandate authorising the same (*c*), signed by him, or in the case of a company (*d*) signed by a party entitled to act for the company (*e*); and in all cases the petitioning or concurring creditor (*f*) shall produce with such petition an oath (*g*) to the effect herein-after specified (*h*), and also the account and vouchers of the debt as herein-after

Oath to be produced.

provided (*i*); failing which production the petition shall be dismissed. SECT. 21.

(*a*) 1. An Englishman, having no occupation, and who designed himself as sometime residing at Park Villas, &c., and now residing at Tobermory, &c., held sufficient designation. (*Joel*, 23d Nov. 1859.)

2. Sequestration recalled where debtor designed himself as "clerk, residing at Innerleithen," whereas his true designation was "clerk in holy orders, and curate of a chapel in England." (*Moses*, 12th July 1866.)

3. Where debtor traded under the name of "Louis Rischman," but was sequestrated as "Philip Ludwig Rischman," which was his full name, held no ground of recall at the instance of a creditor who had special notice of the sequestration. (*Smith*, 6th Nov. 1869.)

(*b*) This means, of course, a duly qualified agent. The "Lord Ordinary" is the Lord Ordinary on the Bills (s. 4).

(*c*) *Vide* s. 63, as to requisites of a mandate.

(*d*) This includes bodies corporate, politic, or collegiate, or partnerships (s. 4).

(*e*) The parties entitled to act for a company, in the ordinary business of the company, are each of the partners, unless excluded by contract, but in extraordinary matters the whole partners must act. An application for sequestration is certainly not an ordinary act, and there is no case in the books of one partner being held justified in making such an application unless his copartners be dead or out of the country. Professor Bell is of opinion that a single partner has no such power (2 B. C. 674). In *M'Lean*, 10th June 1824, sequestration was granted on the application of one partner, the other being out of the country, and having granted the applicant full power to manage the concern, and had for that purpose assigned to him all right to the funds, reserving only a claim of accounting for the profits. In *Campbell*, 3d March 1830, sequestration of a company's estates was granted on the application of one partner, the other being dead. In *Buchanan*, 6th Feb. 1849, it was granted on the application of one partner, the other having absconded to avoid apprehension on a criminal charge, but the petition was first ordered to be served at the company's place of business. The prayer for sequestration of the absent partner's individual estates was abandoned.

(*f*) 1. One joint drawer of a bill for £400, and the endorser of the other, swore, by separate affidavits, to £200 each: sustained. (*Hair*, 9th March 1830.)

2. An oath, by one of a number of executors, entitled the executors to vote. (*Watson*, 27th June 1848.)

Vide s. 25, as to oaths for corporations, pupils, and others.

(*g*) 1. If an oath is once found bad by a final interlocutor, it cannot again be founded on. (*Berry*, 1st Feb. 1825, aff. 25th April 1826; *Lang*, 16th July 1850; *Campbell*, 24th Nov. 1855.)

2. After oath is emitted, and left the creditor's hands, it is irregular to alter it, even to correct an error. (*Railton*, 8th July 1835.)

3. In the following cases declarations are allowed: (1) *Quakers* and Moravians are allowed, in all cases, to make an affirmation, which must be in the following form: "I, A. B., being one of the people called Quakers (or one of the persuasion of the people called Quakers, or of the United Brethren

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called Moravians, as the case may be), do solemnly, and sincerely, and truly declare and affirm." (2) *Separatists* have also the privilege of making declaration (1 Will. & Mary, c. 18; 7 & 8 Will. III. c. 34; 9 Geo. IV. c. 17 and 32; 3 & 4 Will. IV. c. 49 and 82; 1 & 2 Vict. c. 5, 15, and 77). (3) And by a recent Statute, the privilege is extended to all having *conscientious* objections to the taking of oaths. By 18 Vict. c. 25, s. 1, it is enacted: "If any person called as a witness in any court of civil judicature in Scotland, or required or desiring to make an affidavit or deposition, shall refuse or be unwilling from alleged conscientious motives to be sworn, it shall be lawful for the Court or Judge, or other presiding officer or person qualified to take affidavits or depositions, on being satisfied of the sincerity of such objection, to permit such person, instead of being sworn, to make his or her solemn affirmation or declaration in the words following, *videlicet*—I, A. B., do solemnly, sincerely, and truly affirm and declare that the taking of any oath is according to my religious belief unlawful; and I do solemnly, sincerely, and truly affirm and declare," &c.

4. Held no objection to the oath that it was emitted a year prior to the petition. (*Greenhill*, 17th Jan 1824; but *vide* 2 B. C. 324, and *Givan*, 2d Dec. 1837.)

5. The above forms must be strictly followed. Where the word "truly" was omitted in a Quaker's declaration, it was held fatal. (*M'Cubbin*, 28th June 1850.)

6. The word "oath" includes affirmation or declaration in all Statutes. (13 & 14 Vict. c. 21, s. 4.)

7. As to an oath not being really administered, *vide* Lord President Inglis's observations in *Hall*, 22d June 1870.

(*h*) *Vide* s. 22.

(*i*) *Vide* s. 49 as to nature of vouchers; also CREDITOR'S QUALIFICATIONS.

Oath to be to verity of debt and extent of securities.

XXII. Such oath (*a*) in the case of a creditor (*b*) residing within the kingdom of Great Britain and Ireland (*c*), shall be taken by him before a Judge Ordinary, Magistrate (*d*), or Justice of the Peace (*e*) to the verity (*f*) of the debt (*g*) claimed by him; and he shall in such oath state what other persons (*h*), if any, are, besides the bankrupt (*i*), liable for the debt or any part thereof, and specify any security (*j*) which he holds over the estate of the bankrupt or of other obligants, and depone that he holds no other obligants (*k*) or securities than those specified; and where he holds no other person than the bankrupt (*l*) so bound, and no security (*m*), he shall depone to that effect (*n*).

N.B.—*The above section is contained in s. 9 of 2 & 3 Vict. c. 41, and consequently the decisions quoted below, which have been pronounced upon the old section, apply to the new one; but of course s. 51, as to the rectification of oaths, must now be kept in view.*

(*a*) Or affirmation. (13 & 14 Vict. c. 21, s. 4.)

(*b*) The word "creditor" includes companies, &c. (s. 4).

(*c*) Where the creditor is not furth of the United Kingdom, the oath of a factor or commissioner will not do, even although he has the exclusive man-

agement of the creditor's affairs, and the creditor himself knows nothing of the matter. (*Wilkie*, Feb. 1802, 2 B. C. 342.) SECT. 22.

(*d*) 1. The oath is an act of voluntary jurisdiction, and, therefore, one taken before a Baron Bailie was sustained. (*Murray*, 22d June 1821.)

2. An oath set forth that it was emitted before a "Justice of the Peace," who had, however, no commission. It was sustained as he was a Bailie. (*Paterson*, 30th June 1846.)

(*e*) It is immaterial of what county the Justice is, or that a wrong county is set forth in the affidavit (*Turnbull*, 1st March 1828). It would even seem to be competent to take the oath before a Scotch Justice resident in England at the time (*Kerr*, 12th June 1852, aff. June 1854).

(*f*) 1. *It must be an oath of verity, not credulity.* The Court was divided in opinion as to the validity of an oath "to the best of the deponent's knowledge and belief" (*Gibson*, 1st July 1825). The difficulty was obviated by the creditor agreeing to emit an oath of verity. *Vide* s. 25 as to oath of credulity.

2. Where the oath was definite and positive as to the verity of the debt, but added, "that, to the best of the deponent's knowledge and belief, no part of the said sums have been paid," &c., it was held good. (*Forbes*, 2d July 1851.)

3. In oaths it has become a practice, in addition to deponing that the bankrupt is owing the sum claimed, to depone farther that it has never been paid or compensated to the deponent. This is a very unnecessary addition (*Boaz*, 28th Feb. 1824); and in two cases it proved a pernicious one. In *Taylor* v. *Drummond*, 11th Jan. 1848, a subsequent trustee on an estate made a claim, and deponed that the debt was due to the bankrupt, and that it was not paid to the deponent, but did not say that it was not paid to the first trustee. Held bad. In *Glen*, 19th Jan. 1849, an assignee deponed to the debt being resting owing, and that it was not paid to him, but said nothing as to its not being paid to the cedent. Held bad. These decisions have been doubted, and are to some extent contradicted by the case of *Wixon*, 22d June 1849, where an agent deponed that the debt had not been paid to him, without saying so as to his principal; and the case of *Aitken*, 28th Feb. 1852, where the deponent swore definitely that the debt was still resting owing, and also said that no part had been paid to him, but not so as to the deceased creditor whom he represented. The oaths were both sustained. In those cases, where the debt might have been paid to either of two parties, the fact of the creditor swearing that it was not paid to the one introduced a doubt into the matter, by creating a kind of inference that it may have been paid to the other. The simple course is to say, *once* for all, that the debt was at the date of the sequestration, and still *is, truly owing*, and perhaps "that it is not paid or compensated," but nothing more.

(*g*) *The oath must be to a definite sum.*—1. In *Paul*, 13th Feb. 1834, an oath was sustained which was founded on a depending process for share of an executry, though stated to be "without prejudice to the deponent, to augment or restrict her claim hereafter, as she may see proper, for any cause." 2. In *Lizars*, 20th June 1835, a claim was rejected which was founded on a depending action for the balance of an account-current, "deducting therefrom any sums which the said defenders should be able to instruct were due by them to the said Alexander Robertson at the date of the sequestration of his estates." The distinction between the two cases is obvious, the first case being for a definite, and the other for an indefinite, sum.

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(*h*) 1. A creditor claimed on the estate of a bankrupt as representing his father, from whom he had received a *de præsenti* irrevocable conveyance of all his property under burden of certain payments to his brother and sisters. Held that the latter were not representatives of the deceased and liable for his debts, and therefore did not fall to be mentioned in the oath. (*Forrest*, 23d Dec. 1848.)

2. A bank claimed on the estate of the representative of a cautioner under a bond of caution for the intromissions of their manager, and in a statement of losses set forth various parties to whom bills had been discounted, and over-advances made. Held not bound to state these parties as liable for the debt claimed. (*Forrest, supra.*)

(*i*) 1. In the sequestration of "The English Bitumen Company and *Malcolm* Carmichael, the sole surviving partner thereof," a claim lodged against the company and "*William* Carmichael, sole partner thereof." Question if valid. (*Anderson*, 7th July 1847.)

2. Where the bankrupt carried on business under the name of a company, and the oath so described him, held to be in proper form, and not necessary to depone that the firm was the debtor, although the sequestration was that of the firm, and the bankrupt as sole partner. (*Cullen*, 16th July 1842.)

(*j*) *Vide* s. 4. It includes preferences, &c.

(*k*) The words "no other obligants" are not essential. It is enough to say, "no security for the debt other than" A. and B., &c. (*Forbes*, 2d July 1851.)

(*l*) 1. Where the creditor deponed that a company and the partners were owing the debt, it was held good, though he farther deponed that he held no other than the company liable. (*M'Cubbin*, 28th June 1850.)

2. Where the creditor held no one bound but the bankrupt, but the words, "held no other person than the bankrupt bound," were omitted, held fatal to the oath, and that the omission was not supplied by implication, nor by the creditor having deponed that he held no other "securities" than those specified, as the words "securities" and "obligants" are separate. (*Imrie*, 16th July 1842.)

3. The same decision was given in a ranking. (*Wright*, 19th Nov. 1842.)

(*m*) 1. Where the creditor deponed that he "holds no other person, obligant, or company, than the said deceased John Craig bound for the debt, and (*no* awanting) security for the same, or for any part thereof," the oath was sustained, as the meaning was plain. (*Taylor*, 11th March 1848.)

2. The same decision was given where the words were, "nor do hold any security," the pronoun "I" being omitted. (*Hair*, 9th March 1830.)

(*n*) The above section prescribes certain essentials of the oath, but others it omits. No notice is taken of the date, place, or signature, nor of the designation of creditor or magistrate. Farther, it provides no form of oath. The form must therefore be regulated by practice, and upon that subject the rule usually observed is that the oath must be so framed and so completed as to sustain a charge of perjury, if perjury has been committed. The following cases will to some extent illustrate those remarks :—

1. A marginal note unsubscribed cannot be looked at (*M'Kersy*, 7th March 1829). A vote was also rejected where a marginal note as to a security was not signed by the magistrate, though signed by the creditor (*Miller*, 27th June 1848). But affidavit sustained where there was a marginal addition made

by order of the Sheriff, and initialed merely by the creditor and the magistrate, he being the same magistrate before whom oath emitted (*Dow*, 23d Feb. 1875). SECT. 23, 24.

2. An erasure in the *sum* deponed to not being noticed at the end of the oath, the claim was repelled (*White*, 17th Dec. 1846). The same in *Jardine*, 18th July 1848. In this case, held as a presumption that an erasure is *ex post facto*.

3. An objection to an oath where the sum was scored and another sum appeared to have been interlined by the Justice of the Peace at the time, the sum interlined corresponding with the docqueted account annexed, was repelled. (*Dyce*, 19th Dec. 1846.)

4. Where the party cannot write and depones to that effect, or the signature is illegible, it is enough that the Justice of the Peace subscribes. (*Paul*, 13th Feb. 1834, aff. 14th June 1834, 7 W. S. 462; *Perryman*, 17th Feb. 1852.)

5. Where, in the signature of the claimant, the letter *i* was substituted for *y*, and the signature was unlike the signature to the bill, claim rejected. (*Murray*, 15th Nov. 1856.)

6. *English authorities.*—The affidavit must state the day in which sworn (*Doe*, 1 Chit. 228), and the month, which cannot be amended (*Wood*, 3 More, 236; *Anon*, 1 Chit. 562). But the omission of place is not fatal (*Symers*, 1 B. & P. 105.)

7. *English authorities.*—Affidavit so framed that perjury could not be assigned thereon, is bad (*Watson*, 1 M. & Scott, 437). Where the meaning is plain and clear, mere ungrammatical construction will not vitiate (*Anon*, Loff, 274). But otherwise, if meaning left doubtful (*Anon*, 1 Chit. 562). Clerical errors and bad spelling not sufficient to reject (*Bromley*, 1 Chit. 562).

8. The account founded on may be made a part of the oath; but if so, it must be subscribed by both creditor and magistrate. (*M'Cubbin*, 28th June 1850.)

9. *Vide* CREDITOR'S QUALIFICATIONS.

How taken, when creditor out of Great Britain or Ireland.

XXIII. Such oath (*a*), in the case of a creditor who is out of the kingdom of Great Britain and Ireland (*b*), shall be taken by him to the verity of the debt in the manner above provided before a Magistrate or Justice of the Peace, or other person qualified to administer oaths in the country where he resides (he being certified to be a Magistrate or Justice of the Peace, or qualified as aforesaid, by a British Minister or British Consul, or by a Notary Public), or his known agent or mandatory in Great Britain or Ireland shall make an oath of credulity in the manner and to the effect before provided (*c*).

(*a*) Or affirmation. (13 & 14 Vict. c. 21, s. 4.)

(*b*) This does not include the Channel Islands (Dwarris on Statutes, p. 526); nor Isle of Man (1 Blackstone, 21st ed., p. 105).

(*c*) *Vide* CREDITOR'S QUALIFICATIONS.

Oath to specify further particulars in certain cases.

XXIV. When a petition is presented for sequestration of the estates of a deceased debtor, the petitioning creditor shall, in his oath (*a*), or in a separate oath, specify the place where the debtor resided or had a dwelling-house (*b*) or carried on

SECT. 25. business in Scotland at the time of his death, and whether he was then owner of estates (*c*) in Scotland; and when the petition is presented during the life of the debtor, without the consent of the debtor, the petitioning creditor shall in such oath, in the event of the debtor's bankruptcy being founded on his retiring within the Sanctuary, swear that he believes the debtor to have so retired, as herein-before set forth (*d*).

(*a*) Or affirmation. (13 & 14 Vict. c. 21, s. 4.)

(*b*) In *Blair*, 3d June 1846, it seemed to be held that it was enough for the debtor to have had a dwelling-house in Scotland, but which had ceased to be occupied some time prior to his death, he being at the period of his death in Australia along with his family. It is now doubtful, however, whether the requisites of the above section are not mere requisites of the oath which are to be observed by the creditor, so far as possible for him to do, but not essentials of jurisdiction, as in the late Act 2 & 3 Vict. c. 41, s. 4. The matter of jurisdiction is regulated by s. 13, *supra*.

(*c*) *Vide* s. 4 for interpretation of "estates."

(*d*) *Vide* s. 7. *Vide* CREDITOR'S QUALIFICATIONS.

Claims of companies and creditors who are minors or incapable.

XXV. When the creditor is a corporation, an oath (*a*) of verity made as aforesaid by the secretary, manager, cashier, clerk, or other principal (*b*) officer of such corporation shall be sufficient, although the person making the same be not a member of such corporation, or in case of other companies an oath by a partner shall be sufficient; and where any creditor shall be under age (*c*) or incapable to make oath (*d*), an oath of credulity as aforesaid by his authorised agent, factor, guardian, or manager, shall be sufficient (*e*).

N.B.—*This section is contained in s.* 9 *and* 10 *of* 2 & 3 *Vict. c.* 41, *and consequently the following cases on these sections will apply to the above section.*

(*a*) Or affirmation. (13 & 14 Vict. c. 21, s. 4.)

(*b*) 1. The oath of the agent of a bank (on a bill held by the bank), who was not the principal officer, was rejected. (*Campbell*, 27th May 1853.)

2. But a bank agent, to whom a bond was granted for behoof of the bank, was held entitled to claim. (*Bonar*, 9th March 1841.)

3. And an agent who held a bill with a blank indorsation, for behoof of an unincorporated company, was held entitled to petition for sequestration. (*Brown*, 7th March 1845, Jur.)

4. But an oath by the country agent of an incorporated bank, swearing to the debt being due to the bank, was rejected. (*Anderson*, 7th July 1847.)

5. An oath by the assistant manager of an incorporated bank held good. (*Dow*, 23d Feb. 1875.)

(*c*) A minor above fourteen years of age may make oath. (*Miller*, 13th June 1840.)

(*d*) 1. This refers to lunatics, and perhaps includes any one ill of fever or other incapacitating disease. (2 B. C. 342.)

2. Where husband abroad under sentence of transportation, and the wife was pursuing an action with a curator *ad litem*, she was held entitled to claim and vote. (*Paul*, 13th Feb. 1834, aff. 14th June 1834, 7 W. S. 462.) SECT. 26.

(*c*) *Vide* CREDITOR'S QUALIFICATIONS.

Citation on Petition.

XXVI. When a petition for sequestration is presented without the consent of the debtor, or for the sequestration of the estate of a debtor who is dead, without the consent of the successor (*a*), the Lord Ordinary or Sheriff to whom it is presented shall grant warrant to cite the debtor (*b*), or, if dead (*c*), his successor (*d*), to appear within a specified period (*e*), if he be within Scotland, by delivering to him personally, or by leaving at his dwelling-house (*f*) or place of business, or the dwelling-house or place of business last occupied by him, a copy of the petition and warrant, and if the debtor or his successor (*g*) be furth of Scotland, to cite him to appear within a specified period, by leaving such copy at the Office of Edictal Citations, at the dwelling-house or place of business last occupied by him, and if the debtor be dead, also at the dwelling-house or place of business occupied by him at his death, to show cause why sequestration should not be awarded (*h*); and the Lord Ordinary or the Sheriff shall, if desired, grant diligence to recover evidence of the notour bankruptcy or other facts necessary to be established (*i*). When citation of parties necessary.

(*a*) Of course, if the successor renounce the succession, sequestration will be awarded at once, without citation (s. 15 and 29).

(*b*) The word "debtor" includes companies and aliens (s. 4).

(*c*) A question arises whether this applies in the case of a petition at the instance of a mandatory under s. 13, and whether, in such a case, it is necessary to cite the successor. If s. 26 is taken by itself, it would seem to apply; but a careful consideration of the Statute in other parts would lead to a different conclusion, by showing that the petition referred to in this section is one at the instance of a creditor, and not of a mandatory. In s. 21, which regulates the form of the petition, and in s. 24, which prescribes a form of oath in the case of petitions for sequestration against deceased debtors, the Statute plainly has in view applications only at the instance or with the concurrence of a creditor. The above section follows upon these provisions. Then s. 30, which is based on s. 26, in laying down the procedure to be followed *in cases where citation has been given*, orders that sequestration be awarded unless it be shown that payment has been made of the debt "due to the petitioner or to any *other* creditor appearing," which shows that these sections have no reference to an application at the instance of a mandatory. *Vide* also s. 15. The case would rather seem to fall under s. 26 and 29, wherein they provide for petitions with the consent or concurrence of the debtor, which such a petition would seem certainly to have. The reason of the thing supports this view; for if a debtor, prior to his death, considers sequestration to be the best

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mode of winding up his estates for the benefit of his creditors, his successors have no more interest in such a matter than if it were a deed of settlement, which obviously they can have no right to question in the ordinary case.

(*d*) *Vide* interpretation of "successor," s. 4.

(*e*) *Vide* s. 28, as to induciæ and Gazette notice.

(*f*) An execution sustained which bore that the copy was left for the debtor within his "father's dwelling-house in Newburgh, with whom he lives and resides when not at sea." (*Brown*, 14th Feb. 1845.)

(*g*) *Vide* s. 29, note *b*.

(*h*) *Vide*, s. 30.

(*i*) *Vide* s. 7; also s. 13, note *g*.

In sequestration of a company.

XXVII. When the debtor is a company (*a*), it shall be a sufficient citation that a copy of the petition and warrant be left at the place where the business of the company is or was last carried on, provided a partner or a clerk or a servant of the company be there, and failing thereof at the dwelling-house of any of the acting partners, and if the house of such partner cannot be found, by leaving a copy at the office of Edictal Citations (*b*); and sequestration may be awarded either on the application of the company itself (*c*), or on the application of a creditor or creditors to the amount aforesaid (*d*), without the consent of the company (*e*), of the estates of the company and partners jointly, or of their respective estates separately.

(*a*) The word "company" includes corporations, &c. (s. 4).

(*b*) *Vide* s. 28 as to induciæ and Gazette notice.

(*c*) Of course with the necessary concurrence (s. 13 and 14).

(*d*) This means qualified creditors (s. 14, 22, 23, 24, and 25).

(*e*) Provided the requisites of s. 13, 15, 21, and 26 are observed.

Induciæ of citation.

XXVIII. The induciæ of citation, when made personally or at a dwelling-house or place of business, shall not be less than six nor more than fourteen days, and when made edictally (*a*) shall be twenty-one days (*b*); and the Lord Ordinary or the Sheriff at the same time shall direct intimation of the warrant, and of the diet (*c*) of appearance on such induciæ, to be made in the Gazette (*d*).

(*a*) The edictal citation may be of a party *furth of the kingdom* (*vide* s. 26 and 27), or of a minor's tutors or curators. Where the sequestration is from the Court of Session, the mode of citation is the same in both cases (13 & 14 Vict. c. 36, s. 22). And in the Sheriff Court—the mode of citation of tutors and curators by publication at the market-cross of the head burgh being now abolished (39 & 40 Vict. c. 70, s. 12)—the mode of citation is the same in both cases there too.

(*b*) As to execution of citations, *vide* s. 43, note *e*.

(*c*) The Statute contemplates a fixed day and hour of appearance (s. 30), and the notice in the Gazette intimates to the creditors generally the procedure going on, that they may appear if they think proper. But it is not possible to have a specified diet in such cases as that of there being two or more successors of a deceased debtor to be cited, and where some of them are abroad, for in such cases those cited personally appear within fourteen days, and those cited edictally appear within twenty-one days. In such cases the warrant must simply order citation "within a specified period" (s. 26). At same time, where only one party is to be cited, or where all the parties to be cited may be cited to appear within the same induciæ, it is right to have a specified diet. In this way effect is given to both clauses (Dwarris on Statutes, p. 568). SECT. 29.

(*d*) The above section does not apply to citations generally, but to the citation referred to in s. 26 and 27. The "Gazette" means the 'Edinburgh Gazette' (s. 4).

Procedure on Petition.

XXIX. When a petition is presented in manner aforesaid to the Lord Ordinary, or to the Sheriff, for sequestration, the Lord Ordinary or the Sheriff shall forthwith, if the same is presented by or with the concurrence of the debtor, or, if dead, of his successor (*a*), or if the successor shall renounce the succession, issue a deliverance by which he shall (*b*) award sequestration of the estates (*c*) which then belong or shall thereafter (*d*) belong to the debtor (*e*) before the date of the discharge (*f*), and declare the estates to belong to the creditors (*g*) for the purposes of this Act (*h*), and if the debtor is dead shall ordain any successor (*i*) who has made up a title to or is in possession of any part of his property to convey the same to the trustee to be appointed as herein-after mentioned (*j*). Sequestration to be forthwith awarded on petition by debtor.

(*a*) *Vide* s. 4 for interpretation of the term "successor." It means the person or persons who have the right to the deceased's estates, and in that view it may be necessary for more than one to concur or renounce, and it may be *ultra vires* of certain parties to do so: *e. g.*, trustees would not be able to concur if they had only the ordinary powers of trustees, unless the beneficiaries also concurred; neither would a legatee have power to concur unless he were sole legatee. In short, it would seem to be requisite to have the concurrence or renunciation of *all* the parties directly interested in the succession.

(*b*) 1. A creditor may appear and oppose the sequestration. This was decided under 54 Geo. III. c. 137, s. 18, which is similar to this section (*Begbie*, 22d Dec. 1838). *Vide Cheyne*, 26th Nov. 1828, 2 B. C. 326, also s. 30, note *e*, for grounds of objection. The practice is to lodge a caveat to prevent sequestration being awarded until intimation is given to the creditor.

2. *Vide* objections, s. 30, note *e;* also grounds of recall, s. 31, note *g*.

3. The Court would not award sequestration where there existed a bankruptcy in Saxony. (*Goetze*, 27th Nov. 1874.)

4. Where sequestration was awarded on the bankrupt's own petition, and next day having paid the concurring creditor's debt, and finding the application to have been unnecessary, he applied for interdict against the keeper of

SECT. 29. the general minute-book of the Court from entering the sequestration therein with a view to publication: granted. (A. B., 15th Jan. 1835.)

(*c*) *What estates are sequestrated.*—The bankrupt's whole property of every kind is sequestrated, whether presently existing or acquired during the currency of the sequestration—the only exceptions being the necessary wearing apparel of himself, his wife, and family (s. 95). He must give up all his funds, under the penalty of a criminal prosecution (s. 97). By this Act, the creditors may now get a portion of any pay, half-pay, salary, emolument, or pension which the bankrupt may have (s. 149). *Vide* s. 4 for interpretation of "estates." As to estates and property of which the bankrupt is divested, *vide* 1 B. C. 20, 105, 151, &c. Also *vide Smith*, 7th Feb. 1857, as to *jus mariti* being attached; and *Thom*, 11th March 1857, as to an action of damages for injury to feelings also being attached; and *Learmonth*, 21st Jan. 1858, where the trustee found entitled to let a clergyman's glebe. As to abandoned estates, *vide* s. 82, note *b*, also note *h*, *infra*. The sequestration does not attach a right or estate in expectancy or *spes successionis* (*Trappes*, 3d Nov. 1871). Also see s. 104, and notes, as to striking estates out of sequestration. *Vide* CREDITOR'S RIGHTS.

(*d*) *Vide* s. 103 as to mode of attaching estates subsequently acquired.

(*e*) The word "debtor" includes companies, &c. (s. 4).

(*f*) *Vide* s. 140 and 147.

(*g*) This means the creditors to be ranked (s. 121).

(*h*) The purposes of the Act are, *inter alia*—1. To pay the creditors their debts (s. 121), and 2. To reinvest the bankrupt in the surplus (s. 155). The bankrupt has therefore the radical right to the estate—the creditors merely a right in security (*Marshall*, 2d March 1860; *M'Kenzie*, *infra*), although the investiture, *in point of form*, is *absolute* (s. 102), yet subject to surrender of the surplus (s. 155), and to count and reckoning for intromissions and management (s. 86 and 142). 1. The bankrupt consequently takes up all rights abandoned by the creditors (*M'Kersy*, 20th June 1850; *King*, 25th May 1858, 2 B. C. 434; *Fleming*, 16th Nov. 1876). 2. He can even raise an action for a debt after sequestration; and it is not null, but only subject to be intimated to the trustee that he may sist himself (*Thom*, 11th March 1857; *M'Kenzie*, 26th June 1861). 3. After discharge, but without reinvestiture, held entitled to sue for a debt falling under the sequestration with permission from the trustee (*Marshall*, *supra*). 4. Where sequestration subsisted for twenty years, and trustee did not insist on a certain claim, held that the bankrupt had a title to sue, but directed him to call a meeting of creditors with a view to ascertaining whether they meant to insist on the claim (*Graham*, 3d June 1871). 5. But, of course, whenever sequestration takes place, all process at the bankrupt's instance is sisted until intimation is made to the trustee (*Dickson*, 15th Jan. 1839; *Hallowell*, 17th Feb. 1843). 6. It would appear that the bankrupt has a sufficient interest to entitle him to apply for the trustee's removal (*Robertson*, 17th May 1871). *Vide* RIGHTS OF BANKRUPT; also TRUSTEE'S RIGHTS.

(*i*) *Vide* s. 106 as to special application against successor.

(*j*) 1. *Vide* s. 68 as to election of trustee.
2. By the same deliverance a meeting of creditors is ordered (s. 67).
3. And Gazette notice to be given (s. 48).

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Sequestration to be awarded after citation and hearing parties when petition not by debtor.

XXX. Where the petition is not by or with the concurrence of the debtor (*a*), or, if dead, his successor (*b*), and if the debtor, or if dead, his successor, do not appear at the diet (*c*) of appearance, either in person or by his counsel or agent (*d*), and show cause why the sequestration cannot be competently awarded (*e*), or if the debtor (*f*) so appearing do not instantly pay the debt or debts in respect of which he was made bankrupt, or produce written evidence of the same being paid or satisfied, and also pay or satisfy (*g*), or produce written evidence of the payment or satisfaction of the debt or debts due to the petitioner or to any other creditor appearing and concurring in the petition (*h*), the Lord Ordinary or Sheriff, on production of evidence of the citation and of the foresaid requisites (*i*) for sequestration, shall award sequestration in manner and to the effect before-mentioned (*j*): and it shall not be competent for any creditor, after the date of the first deliverance on the petition for sequestration, to be confirmed executor-creditor, or to raise or insist in any adjudication against the estate of the deceased debtor.

(*a*) The word "debtor" includes companies, &c. (s. 4).

(*b*) See s. 4 for interpretation of "successor." Also s. 29, note *a*.

(*c*) *Vide* s. 28, note *c*.

(*d*) Of course all parties interested may appear and oppose the sequestration. A creditor may appear in all cases (s. 29, note *a*), and the debtor or successor in any case where a creditor or mandatory is the applicant (s. 30).

(*e*) 1. Under 54 Geo. III. c. 137, s. 15, and 2 & 3 Vict. c. 41, s. 14 and 15, a discretionary power as to awarding sequestration was vested in the Court, and accordingly in several cases it was refused: *e. g.*, 1. In *Speid*, 10th June 1850, where a landlord would not realise his hypothec; 2. In *Milne*, 13th June 1850, where the insolvency of a deceased debtor was not averred; and, 3. In *Weir*, 20th June 1848, where a bond-holder would not sell. But even under these Statutes it was held no objection to sequestration, (1) that the debtor's estates were under trust (*Earl of Kellie*, 28th Feb. 1821; *Lockie*, 14th Feb. 1837), or (2) under management of executor-creditor (*Macdonald*, 13th June 1840), or (3) judicial factor (*Newal's Trustee*, 13th June 1840), or (4) executor-dative (*Steel*, 17th Jan. 1852; 1 Stuart, 284), nor that the estates of a deceased debtor were solvent (*Semple*, 21st Jan. 1841). These latter cases certainly hold good under the present Act, and even the former cases, it is apprehended, have no force under this Act, where no discretion is allowed, but where the sequestration falls to be awarded as a matter of course, if the requisites of the Statute are complied with, and none of the grounds of objection in the former class of cases are requisites of sequestration under this Act. But *vide* Lord President's opinion in *Campbell* and *Beck*, 11th June 1862.

2. No objection that the petitioning creditor had in an accession to a trust agreed to suspend all diligence till a particular action was finally decided. (*Jopp*, 22d Dec. 1844; *vide Campbell* and *Beck*, *supra.*)

3. *Vide* s. 31, note *g*, for grounds of recall. It may be laid down generally

SECT. 31. that the grounds of objections to the awarding of sequestration are the same grounds as those of an application for recall.

(*f*) It does not exactly specify what is to be done if the *successor* appear. Perhaps consignation of the creditor's debt would bar the application—particularly if disputed and in course of being reduced, as in *Alexander*, 14th Jan. 1845. (*Vide Roger*, 10th June 1850.)

(*g*) It does not appear that consignation will suffice in place of payment in so far as the debt on which the debtor was rendered bankrupt is concerned; and perhaps this is not to be regretted, as the debtor will have had ample opportunities, before sequestration can be applied for, of having it called in question if disposed to do so. But so far as regards the debts of the compearing creditors, the case is different; for these the debtor may have serious objections to, which he has had no opportunity of stating and establishing. No doubt these creditors must adduce such evidence as is necessary to prove their debts (s. 49 and 50), and the same latitude of inquiry would at least be allowed as in a scrutiny of votes under a competition for a trusteeship (s. 58, note *a*). But this is plainly not enough if the debt is to be paid; for the limited investigation which is allowed in such cases, while it may do in questions of voting, is not sufficient in a ranking for a dividend, and certainly not in a case of full payment. It would perhaps solve the difficulty if satisfaction is held to mean consignation or security; and while this would meet the justice of the case, it might also, without violence, define correctly enough for practical purposes, the meaning of a term which indicates something different from payment.

(*h*) Creditors appearing and concurring in the petition must make an affidavit, in all respects similar to that required of the original petitioner, and produce vouchers (s. 50).

(*i*) *Vide* s. 13, 14, 15, and from 21 to 28 inclusive. Also s. 13, notes *g* and *j*.

(*j*) 1. *Vide* s. 29. 2. By the same deliverance a meeting is ordered (s. 67); and Gazette notices (s. 48). 3. A creditor entitled to expenses of an application for sequestration of a deceased debtor's estates, where the debt was consigned and the proceedings stopped, and that although a factor *loco tutoris* was in the management of the heritable estate, and he was taking steps to procure a loan to pay the debt, and an executor was appointed and decerned over the moveables, and the estate was alleged to be solvent. (*Steel*, 17th Jan. 1852, 1 Stuart, 284.)

Recall of sequestration within forty days.

XXXI. The deliverance awarding sequestration shall not be subject to review (*a*); but any debtor (*b*) whose estate has been sequestrated without his consent, or the successors (*c*) of any deceased debtor whose estate has been sequestrated without their consent, unless on the application of a mandatory authorised by the deceased debtor, or any creditor (*d*), whether the sequestration has been awarded by the Lord Ordinary or by the Sheriff, may, within forty days (*e*) after the date of such deliverance, present a petition (*f*) to the Lord Ordinary, setting forth the grounds (*g*) for recall, and praying for recall; and when sequestration has been awarded of the estate of a

deceased debtor, when his successor was edictally cited (*h*), it shall be competent for his successor (*i*), or any person having interest (*j*), to apply by petition as aforesaid at any time before the publication of the advertisement for payment of the first dividend herein-after mentioned (*k*); and the Lord Ordinary shall, in these several cases, order a copy of the petition for recall and of his deliverance to be served on the parties who petitioned or concurred (*l*) in the petition for sequestration, or on their respective known agents, and on the trustee, if appointed, and shall require them to answer within a specified short time, and order a notice of the presentation of the petition for recall to be published in the Gazette (*m*), and on the expiration of the time so fixed he shall proceed to pronounce judgment; and if he shall recall the sequestration, the recall shall be entered in the Register of Sequestrations, and on the margin of the Register of Inhibitions. SECT. 31.

N. B.—*The above section is substantially the same as s.* 21 *of* 2 *&* 3 *Vict.* c. 41, *and consequently, the cases quoted below, so far as decided under the latter Statute, apply to the present one.*

(*a*) The difference between recall and review is considerable. A recall of a sequestration does not annul transactions during the dependence of the sequestration—*e. g.*, a sale of a portion of the estate, the discharge of a debt, or a compromise (2 B. C. 334; *Crawford's Trustees*, 25th May 1827). While under an appeal, the whole proceedings would be null *ab initio*, if the deliverance were altered. In the case of *Crawford's Trustees*, the point decided was that prescription of a bill was interrupted by claiming in a sequestration in terms of 54 Geo. III. c. 137, s. 52, although the sequestration was afterwards recalled, in terms of s. 22; but the above doctrine was laid down generally; and it is worthy of remark, that there was no special provision in that Act that the interruption is to be effectual though a recall takes place, as there is by this Act, s. 109.

(*b*) The word "debtor" includes companies, &c. (s. 4).

(*c*) *Vide* s. 4, for interpretation of "successors." Also s. 29, note *a*.

(*d*) An oath with vouchers is necessary (s. 50; *vide Perryman*, 17th Feb. 1852). The word "creditor" includes companies, &c. (s. 4).

(*e*) As to the computation of the forty days, *vide* s. 5, and note.

(*f*) 1. The petition for recall, when presented to the Lord Ordinary, may be signed by a duly qualified agent, and not necessarily by the petitioner or by counsel. (*Scott*, 18th Feb. 1848.)

2. An error in stating the name of the petitioner—as *John* instead of *Henry* —is fatal. (*Haines*, 31st Jan. 1862.)

(*g*) 1. Recall was refused at the instance of a minority of creditors, on the ground that the expense of winding up the estate would be heavy. (*Kidd*, 12th Feb. 1830.)

2. Not incompetent to make application for recall on same grounds as those on which the applicant opposed the sequestration. (*Elder*, 12th June 1850.)

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3. Recall was refused on the ground that the sequestration had been adopted by the general body of creditors, and objection repelled that the concurring creditor was himself an undischarged bankrupt, it appearing that the trustee on his estate was never confirmed, and that his oath and vouchers as concurring creditor were *ex facie regular*. (*M'Nab*, 13th Dec. 1851, 1 Stuart, 165.)

4. If the concurring creditor's oath is inept, the sequestration must be recalled; and neither can a creditor sist himself and prevent a recall by concurring, nor will the approval of the sequestration by the other creditors save it from recall. (*Campbell*, 27th May 1853; *vide* s. 34, note *c*.)

5. Held that "if the case falls within the Statute, the Court is bound to award sequestration, and to maintain it when awarded." (*Joel*, 10th June 1859.)

6. "I am of opinion that we cannot sustain these grounds for recall, unless we are satisfied that, if they had been stated to the judge who awarded sequestration, he would have been bound to refuse to award it." (Per *Lord Justice-Clerk*, in *Joel*, 23d Nov. 1859.)

7. As to objections to awarding sequestration, *vide* s. 30, note *e*.

8. An English debtor coming to Scotland for the purpose of getting out sequestration—no ground of recall. (*Joel*, 23d Nov. 1859.)

9. Where no radical defect stated, a party who had competed for the trusteeship barred from afterwards applying for recall. (*Ure*, 28th May 1857; but see *Ballantyne*, 29th Jan. 1867.)

10. But the mere attending of meetings and the bankrupt's examination, and appealing against resolutions of the creditors, will not bar, *personali exceptione*, a petition for recall. (*Joel*, 23d Nov. 1859.)

11. Sequestration may also be recalled if majority of creditors reside in England or Ireland, and if estates ought to be distributed there. (23 & 24 Vict. c. 33, s. 2, *postea*.)

12. Recall granted where sequestration had been obtained by an improper use of the process. (*Gardner*, 24th June 1862.)

13. Observed that the want of an apparent estate is no ground of recall. (*Gardner, supra*.)

14. The subsistence of an English adjudication of bankruptcy is a good ground of recall. (*Young*, 17th May 1864.)

(*h*) *Vide* s. 26 and 28.

(*i*) *Vide* note *c*, *supra*.

(*j*) All creditors have an interest (s. 30, note *d*; also s. 31).

(*k*) *Vide* s. 127.

(*l*) *Vide* s. 13 and 30, as to concurring creditors.

(*m*) This means the 'Edinburgh Gazette" (s. 4).

Recall of sequestration at a future time.

XXXII. No petition for recall of the sequestration (*a*), excepting as herein-after provided, shall be competent after the expiration of the said forty days, or after the advertisement for payment of the first dividend (*b*); provided that nine-tenths in number (*c*) and value of the creditors ranked (*d*) on the estate as herein directed may at any time apply for recall by petition to the Lord Ordinary, who shall order notice of

his deliverance to be published in the Gazette (*e*), requiring all concerned to appear within fourteen days from the date of publication to show cause why the sequestration should not be recalled, and on expiration of the said time he shall proceed to pronounce judgment (*f*). SECT. 33, 34.

(*a*) The Court recalled a sequestration where it had not been followed forth, but where the creditors had been settled with, and now concurred in the application for recall. (*Anderson*, 13th March 1866.)

(*b*) This refers to the advertisement mentioned in s. 31.

(*c*) As to computing creditors by number, *vide* s. 101 and 145, note *b*.

(*d*) This refers to creditors ranked by trustee (s. 126) with a view to a dividend.

(*e*) This means the 'Edinburgh Gazette' (s. 4).

(*f*) If the sequestration is recalled under this section, an entry will be ordered to be made, as provided at the end of s. 31. (*Vide Brandon*, 9th July 1862.)

XXXIII. Pending any petition for recall, and until the sequestration be finally recalled, the proceedings in the sequestration shall go on as if no such petition had been presented (*a*). Proceedings not to be stayed.

(*a*) 1. Even to the bankrupt's discharge (s. 140, note *h*).

2. Nor does the sequestration stop, though a composition is offered (s. 142).

3. The costs of a competition for the trusteeship may be disposed of after recall. (*Crawford*, 8th Dec. 1821.)

XXXIV. If a creditor who has petitioned for sequestration, or concurred in such petition, or who has petitioned for recall of a sequestration, or appeared to oppose a petition for sequestration or recall, or lodged an objection (*a*), shall withdraw, or become bankrupt, or die, any other (*b*) creditor may be sisted in his place and follow out the proceedings (*c*); and if the debtor shall die after the petition for sequestration is presented, the proceedings shall notwithstanding be followed out in terms of this Act, so far as circumstances will permit. Sisting of one party for another.

(*a*) A creditor may also sist himself in an application for removal of a trustee (*Richmond*, 11th Feb. 1854). This case was decided under 2 & 3 Vict. c. 41, of which s. 23 is the same as the above.

(*b*) It is not free from doubt whether this means a creditor duly qualified, in terms of the Statute, to do originally any of these specified acts, or any creditor qualified to vote and act (s. 49 and 50)—*e.g.*, a creditor who petitions for sequestration must be a creditor to the extent of £50; but the above section seems to qualify *any* creditor to be sisted in his place, although his debt be less. It is worthy of remark that a petitioning creditor was held entitled to insist in the proceedings, although his debt was subsequently reduced below £50. (*Allan*, 28th Nov. 1840.)

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(*c*) Where an application was made for recall of a sequestration, on the ground, *inter alia*, that the affidavit was invalid, and a duly qualified creditor appeared to sist himself as a concurring creditor, held under s. 23 of 2 & 3 Vict. c. 41, that, as the original creditor had not "withdrawn, nor become bankrupt, nor died," the compearance could not be sustained. (*Campbell*, 27th May 1853.)

Majority of creditors may resolve that estate be wound up.

XXXV. At the meeting for the election of the trustee, or at any subsequent meeting to be called for the purpose, a majority in number (*a*) and four-fifths in value of the creditors (*b*) present (*c*) or represented (*d*) at such meeting may resolve that the estate ought to be wound up under a deed of arrangement (*e*), and that an application should be presented to the Lord Ordinary or the Sheriff to sist procedure in the sequestration for a period not exceeding two months, and on such resolution being carried it shall not be necessary to elect a trustee.

(*a*) *Vide* s. 98 and 99, as to mode of calling meetings.

(*b*) Creditors entitled to vote (s. 49, note *b*).

(*c*) *Vide* s. 145, note *h*.

(*d*) *Vide* s. 63.

(*e*) It is *ultra vires* of the creditors to pass a resolution in the following terms: "That the estate be wound up under a deed of arrangement, to realise the estate and divide it among the creditors." (*Dixon*, 13th July 1867.)

Bankrupt to report resolution to the Lord Ordinary.

XXXVI. It shall be lawful for the bankrupt, or any person appointed by the meeting (*a*), to report such resolution to the Lord Ordinary or the Sheriff (*b*), within four days (*c*) of the date of such resolution, and to apply for a sist of the sequestration in terms thereof; and the Lord Ordinary or the Sheriff may hear any party having interest, and if he shall find that such resolution was duly carried, and that the application is reasonable, may grant the same.

(*a*) A majority in value will determine this appointment (s. 101).

(*b*) "Sheriff" includes Sheriff-Substitute (s. 4; *vide* s. 170, note *e*).

(*c*) The limit to four days would appear to be imperative, so as to render the application incompetent beyond the term. *Vide* s. 39, which states that the sequestration is to proceed, if the resolution is not *duly* reported. As to computation of the four days, *vide* s. 5.

Lord Ordinary to make arrangement for interim management of estate.

XXXVII. In the event of such application being granted, the Lord Ordinary or the Sheriff (*a*) may, on the application of any creditor (*b*), make such arrangement for the interim management of the estate as he shall think reasonable, if any shall appear to be necessary.

(*a*) "Sheriff" includes Sheriff-Substitute (s. 4; *vide* s. 170, note *e*). SECT. 38.

(*b*) The creditor must be qualified in terms of s. 49, note *b*, and 50, by the production of oath and vouchers. (*Vide* CREDITOR'S QUALIFICATIONS.)

If sequestration be sisted, creditors may produce to the Lord Ordinary a deed of arrangement.

XXXVIII. If the sequestration shall be sisted, the creditors may, at any time within the period of such sist, produce to the Lord Ordinary or the Sheriff a deed of arrangement (*a*), subscribed by or by authority (*b*) of four-fifths in number (*c*) and value of the creditors of the bankrupt (*d*), and the Lord Ordinary or the Sheriff may consider the same, and make such intimation thereof as he may think proper, and hear parties having interest, and make any inquiry he may think necessary (*e*); and if he shall be satisfied that such deed of arrangement has been duly entered into and executed and is reasonable (*f*), he shall approve thereof, and declare the sequestration at an end; and such deed shall thereafter be as binding on all the creditors as if they had all acceded thereto: Provided always, that the sequestration shall receive full effect in so far as may be necessary for the purpose of preventing, challenging, or setting aside preferences over the estate (*g*).

(*a*) The Statute is silent as to the requisites and form of the deed of arrangement; but by an amending Act it is provided that the arrangement may be a settlement by way of composition (Act 1860, s. 5, *postea*). It generally is a simple composition contract—on the one hand, an obligation to pay a composition with security, and on the other hand, a discharge and reinvestment. But it may obviously be different. By the Act creditors and bankrupt are allowed simply to wind up the estate by a deed of arrangement, and the Court is to declare the sequestration at an end. Now, by winding up the estate, is meant the disposal of the bankrupt's property; and by declaring the sequestration at an end, is meant that parties are out of Court. 1. The disposal of the estate is an essential of the arrangement, for, till this is done, the goods remain under sequestration, and therefore the process would not be at an end. They may, of course, be disposed of in any way the parties choose. They may be given to the bankrupt or to the creditors, or to a third party, for their security or payment. 2. The process being at an end, it follows that the creditors, on the one hand, lose all the machinery of the sequestration for the detection of fraud, and all judicial control of the bankrupt; and, on the other hand, the bankrupt loses the right to apply for protection or for a discharge. In short, all remedies under the Statute are gone. The rights of parties are now fixed and regulated by the deed of arrangement. By it is regulated the disposal of the estate, the right of challenging preferences, the bankrupt's discharge, the purging of the records, and any other items of settlement. It has been accordingly decided that by the terms of a deed of arrangement the creditor's original claim may be stipulated to revive in the event of the composition not being paid (*Alexander*, 15th Nov. 1873). Further, there appears nothing to prevent creditors giving, and bankrupts accepting, a partial or conditional discharge, or a discharge of one partner while it is refused to another, or no discharge at all. There appears nothing to prevent the creditors from taking a composition *without* caution, which they cannot do in an ordinary

SECT. 39. composition settlement under the Statute. The creditors, however, could not discharge the bankrupt, and continue to wind up the estate under the Act; for the process, as already noticed, is at an end.

While it is thus enacted that the estate may be wound up in this way, and the sequestration declared at an end, there seems nothing to prevent a partner's estate from being so wound up, leaving the company's estate still under sequestration, and *vice versa*. Under s. 116 of 2 & 3 Vict. c. 41, the Court were in the same way to "declare the sequestration to be at an end," and this was held to warrant the Court in declaring the sequestration at an end *quoad* the partners, but not so far as regarded the company. (*Taylor*, 26th May 1840.)

As the phrase "deed of arrangement" appears to be borrowed from the English Statute (12 & 13 Vict. c. 106, s. 224), it may be as well to advert to the meaning assigned to it by that Statute. "And with respect to arrangements by deed, be it enacted, that every deed or memorandum of arrangement, now or hereafter entered into between any such trader and his creditors, and signed by or on behalf of six-sevenths in number and value of those creditors whose debts amount to ten pounds and upwards, touching such trader's liabilities and his release therefrom, and the distribution, inspection, conduct, management, and mode of winding up his estate, or all or any of such matters, or any matters having reference thereto, shall (subject to the conditions hereinafter mentioned) be as effectual and obligatory in all respects, upon all the creditors who shall not have signed such deed or memorandum of arrangement, as if they had duly signed the same."

(*b*) *Vide* s. 146, note *d*.

(*c*) As to computing a majority in number, *vide* s. 145, note *b*.

(*d*) 1. Of course the bankrupt must likewise subscribe the deed, as it is obvious there can be no arrangement unless both parties concur.

2. "The creditors" means the whole creditors, whether claiming to vote or not.

(*e*) 1. The practice is to order notices in the 'Edinburgh Gazette' and a local newspaper, and circulars to the non-concurring creditors, and thereafter bankrupt to emit a declaration that his state of affairs is correct, and that it contains a true list of all his creditors, and that there are no other non-concurring creditors than those to whom circulars have been sent.

2. The word "Sheriff" includes Sheriff-Substitute (s. 4; *vide* s. 170, note *e*).

(*f*) *Vide* s. 138, note *j*.

(*g*) 1. If bankrupt to have right to reduce preferences, he must specially stipulate for it. (*Vide* s. 140, note *o*.)

2. There is no statutory prohibition of preferences and collusions in the case of deeds of arrangement as in the case of composition settlements (s. 150); but the common law will deal with such cases.

If resolution not reported, the sequestration to proceed.

XXXIX. If such resolution shall not be duly reported (*a*), or if a sist be refused, or if such deed of arrangement shall not be duly produced (*b*), or if it shall not be approved of, the sequestration shall proceed, and the period of time subsequent to such resolution shall not be reckoned in calculating periods

of time prescribed in this Act; and the Lord Ordinary or the Sheriff (*c*) may make all necessary orders, by appointing meetings of creditors and otherwise, for resuming the necessary procedure in the sequestration.

(*a*) The resolution is to be reported within four days (s. 36).

(*b*) The deed must be produced within the period of the sist (s. 38).

(*c*) This includes Sheriff-Substitute (s. 4; *vide* s. 170, note *e*).

If sequestration declared at an end, judgment to be recorded.

XL. If the sequestration be declared at an end, the judgment declaring the same shall be recorded in the same manner as if the sequestration had been recalled as herein-before provided (*a*).

(*a*) *Vide* s. 31, as to mode of recording.

Payment of expenses of petitioning or concurring creditor.

XLI. The petitioning or concurring creditor shall be entitled to payment by the trustee, when he shall be appointed, out of the first of the funds (*a*) which shall come into his hands, of the expenses incurred by such creditor in obtaining the sequestration (*b*) and doing the other acts hereby required prior to the election of the trustee, as the same shall be taxed.

(*a*) *Vide* s. 121, note *b*, as to payment of these expenses in a question with a preferable creditor. *Vide* also *Bell*, 9th June 1854.

(*b*) 1. Even although the case goes to the House of Lords. (*Bailie*, 17th May 1833; *vide Cook*, 2d June 1831.)

2. Where the petitioning creditor had rendered the debtor notour bankrupt on two diligences, held entitled to expense of one only. (*Dalrymple*, 12th June 1823.)

Commencement of sequestration.

XLII. In all questions under this Act or preceding Acts regarding sequestration of the estates of debtors, the sequestration shall be held to commence and take effect on and from the date of the first deliverance on any petition for sequestration, which shall be held to be the date of the sequestration, although the sequestration be not actually awarded until a later date (*a*).

(*a*) 1. Where, in consequence of an error in fixing the place for the first meeting of creditors, which was supposed to invalidate the sequestration, a petition was presented for sequestration *de novo*, and for conjunction of the petitions, which was granted, opinion of Lord Fullarton that the deliverance under the first petition fixed the date of the sequestration. (*Love*, 4th June 1846.)

2. Where a petition was presented by a creditor for sequestration of his debtor's estates, and a deliverance pronounced, but the debtor afterwards petitioned for sequestration, which was awarded of a later date, the Court recalled that sequestration, and remitted the debtor's petition to the first process. (*Jarvie*, 25th Nov. 1865.)

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Clerks to sequestration.

Sequestration not to fall asleep.

XLIII. In sequestrations awarded in the Court of Session and remitted to the Sheriff the process of sequestration (*a*) shall be held to be in the Bill Chamber of the Court of Session (*b*), and the Clerks of the Bill Chamber shall be clerks to such sequestrations; and the Sheriff Clerk of any county shall be clerk to the sequestrations awarded by the Sheriff of that county; and no process of sequestration, either in the Court of Session or Sheriff Court, shall fall asleep, or shall be liable to be dismissed under the 15th section of the Act passed in the 16th and 17th year of the reign of her present Majesty, chapter 80; and on a remit (*c*) of a sequestration awarded in the Court of Session being made to the Sheriff, a copy of the petition for sequestration and of the first deliverance, and also (where it is different) of the deliverance awarding sequestration, certified by one of the Clerks of the Bill Chamber or Sheriff Clerk (*d*), shall, with the productions, be transmitted by the petitioner to the Sheriff Clerk of the county to the Sheriff of which the sequestration is remitted; and in all sequestrations the Sheriff Clerk and messengers-at-arms and officers of the Sheriff Court shall have power to act in their respective offices under this Act (*e*).

(*a*) Observed that every proceeding in a sequestration should not be a separate process with a distinct inventory, but that the whole should form one process with a common inventory. (*Campbell*, 11th March 1856.)

(*b*) 1. They are consequently regulated by Bill Chamber rules, so far as the same are applicable. (*Scott*, 18th Feb. 1848.)

2. An award of expenses generally, by the Court of Session, on appeal in such sequestrations, means expenses both in the Court of Session and in the Sheriff Court. (*Kerr*, 31st May 1845.)

3. *Vide* Act of Sederunt 26th May 1859, *postea*, as to sequestrations prior to 1856 being remitted to Bill Chamber Clerks.

(*c*) As to Sheriff Court forms of procedure, *vide* s. 18, and notes.

(*d*) The words "or Sheriff Clerk" are here by mistake.

(*e*) Citations under warrants of Court of Session given by messengers-at-arms occasion considerable expense in remote districts. The Court have therefore, in some cases, ordered their writs to be executed by Sheriff-officers, from the difficulty of procuring messengers-at-arms. (*Cooper*, 15th July 1854.)

Protection or Liberation of Debtor.

Warrant of protection may be granted to the debtor.

XLIV. The Lord Ordinary or Sheriff (*a*), when awarding sequestration, may grant to the debtor or partners (*b*) of the company against whom or which it is awarded a warrant of protection against arrest or imprisonment for civil debt (*c*), until the meeting of the creditors for the election of trustee, or he may refuse to grant such warrant of protection; and every such warrant of protection which shall not be advertised

in the London and Edinburgh Gazettes within one week after the date of awarding such sequestration shall be ineffectual and incapable of being pleaded in bar of personal diligence (*d*); but, notwithstanding that the Lord Ordinary or Sheriff may have refused to grant interim warrant of protection as aforesaid, it shall be competent to the creditors (*e*), on the occasion of the meeting to elect a trustee, or at the meeting after the examination of the bankrupt, or at any subsequent meeting (*f*), to resolve that personal protection ought to be granted to the bankrupt (*g*) for such time as they may think fit, and the trustee shall thereupon apply to the Sheriff, who shall grant the protection (*h*). SECT. 45.

(*a*) This also means Sheriff-Substitute (s. 4; *vide* s. 170, note *e*).

(*b*) It appears competent to grant protection to one or more partners of a company, and refuse it to others, just as a discharge can be granted to one, and not to the others. (*Vide* s. 137, note *b*.)

(*c*) Protection from arrest does not liberate from prison. (2 B. C. 438.)

(*d*) Where there was an omission to advertise, Court declined to remedy it. (*Tolmie*, 26th Nov. 1853.)

(*e*) This means the creditors entitled to vote (s. 49), and a majority in value (s. 101). It requires a majority in *number* and value to *renew* the protection (s. 77).

(*f*) *Vide* s. 98 and 99 as to mode of calling meetings.

(*g*) 1. The singular includes the plural. (13 & 14 Vict. c. 21, s. 4.)

2. A resolution to give protection to the bankrupt does not entitle him to apply to the Court for liberation. (*Summers*, 29th Dec. 1862.)

(*h*) *Vide* s. 77, notes *h* and *i*.

XLV. The Lord Ordinary or the Sheriff (*a*) by whom sequestration was awarded may, on application made either in the petition for sequestration, or by a separate petition by the debtor, grant warrant for liberating the debtor, if in prison, after such intimation to the incarcerating creditor (*b*) or his known agent as the Lord Ordinary or the Sheriff may deem just, and after hearing any objection to the granting of such warrant (*c*); and if the application be refused it shall be competent for the debtor to make a new application for liberation, with consent of the trustee and commissioners (*d*), and, on intimation and hearing objections as aforesaid, the Lord Ordinary or the Sheriff may grant warrant to liberate; and in any case the Lord Ordinary or the Sheriff may annex such conditions of caution or otherwise to such warrant as he may judge proper (*e*). Warrant to liberate the debtor.

(*a*) This includes Sheriff-Substitute (s. 4; *vide* s. 170, note *e*).

(*b*) Held by Lord Ivory that a creditor who has not used any diligence against the bankrupt cannot be heard on the matter of liberation. (A. B., 16th July 1840.)

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(*c*) 1. Where a bankrupt under this clause in the late Act (2 & 3 Vict. c. 41, s. 17) included a prayer for liberation in the petition for sequestration, and the creditor appearing alleged *inter alia* that the bankrupt had committed a breach of sequestration for rent, although denied by the bankrupt, the Court held that at that early stage the liberation must be refused. (*Muir*, 30th Nov. 1839. See A. B., 16th July 1840; *Robertson*, 14th July 1857.)

2. The debtor does not get liberation as a matter of course, and it is not enough for him to urge that no cause has been shown why he should not be liberated. (*Armstrong*, 18th Feb. 1869.)

(*d*) After liberation has been refused on the petition of the debtor, it would appear that he cannot again apply without consent of the trustee and commissioners, of which a quorum would be sufficient. Under the same section in the late Statute (2 & 3 Vict. c. 41, s. 17), a second application was made after the first was refused *hoc statu*, and in respect of no such consent it was refused as incompetent. (*Ritchie*, 17th July 1856.)

(*e*) 1. Even without an express power to annex conditions, the Lord Ordinary under the same section (17) of 2 & 3 Vict. c. 41, was held to have the power to annex as a condition to the warrant of liberation, that caution be found that the bankrupt do not leave the country. (*M'Donald*, 27th Feb. 1840.)

2. Held that liberation should only be granted on caution that the bankrupt would return to prison in the event of the sequestration being recalled. (*Foulds*, 22d Nov. 1873.)

Sheriff's judgment subject to appeal.

XLVI. The judgment of the Sheriff granting or refusing liberation shall be subject to review by a note of appeal (*a*) to either Division of the Court of Session, or, during vacation, to the Lord Ordinary, which appeal shall be heard summarily, and the judgment pronounced thereon shall be final (*b*).

(*a*) *Vide* s. 170 as to time and mode of appeal.

(*b*) In the event of liberation being granted, it does not appear competent to any but the incarcerating creditor to appeal, as it is he alone who can object in the first instance (s. 45, note *b*).

Effect of warrant of protection or liberation.

XLVII. The warrant granting protection or liberation, or a copy thereof, certified by one of the Bill Chamber Clerks if it is granted by the Lord Ordinary, or by the Sheriff Clerk if it is granted by the Sheriff (*a*), shall protect or liberate the debtor from arrest or imprisonment in Great Britain and Ireland and her Majesty's other dominions for civil debt contracted previous to the date of sequestration, and all courts of justice and judges and all officers and gaolers shall be bound to give effect to such warrant; but such warrant of protection or liberation shall not be of any effect against the execution of a warrant of apprehension or imprisonment *in meditatione fugæ* or *ad factum præstandum*, or for any criminal act.

(*a*) Being, of course, advertised in the Gazettes, in terms of s. 44, if it is a warrant of protection.

Registration of Sequestrations.

SECT. 48. Recording abbreviate of sequestration.

XLVIII. The party applying for sequestration shall present, before the expiration of the second lawful day (*a*) after the first deliverance if given by the Lord Ordinary, or present or transmit by post before the expiration of the second lawful day after the said deliverance if given by the Sheriff, an abbreviate of the petition and deliverance, signed by him or his agent (*b*), in the form of Schedule (A. No. 1) hereunto annexed, to the keeper of the Register of Inhibitions at Edinburgh (*c*), who shall forthwith record the said abbreviate in the Register of Inhibitions, and write and subscribe a certificate thereof on the said abbreviate in the form also specified in the said Schedule (A. No. 2), and shall, on the request of the party transmitting such abbreviate, and on payment by him of the fees of such registration, and of the postage, retransmit the said abbreviate by post to the said party; and the abbreviate so recorded shall from the date of the said deliverance have the effect of an inhibition (*d*) and of a citation in an adjudication (*e*) of the estate of the debtor at the instance of the creditors afterwards ranked on the estate; and it shall not be competent to stop such effect, or the effect of the sequestration after it is awarded, by paying the debt or debts in respect of which it was applied for or awarded; and if the said abbreviate be not so recorded it shall have no effect as an inhibition or citation as aforesaid, and the party applying for sequestration shall, within four days from the date of the deliverance awarding the sequestration (if awarded in the Court of Session), or, if it is awarded by the Sheriff, within four days after a copy of the said deliverance could be received in course of post in Edinburgh, insert a notice (*f*) in the form of Schedule (B.) hereunto annexed in the Gazette (*g*), and also one notice in the same terms within six days from the said date in the 'London Gazette.'

N.B.—*The above section is so far the same as s.* 20 *of* 2 & 3 *Vict.* c. 41, *as to render the following cases quite applicable.*

(*a*) *Vide* s. 5 as to computation of time.

(*b*) This means a duly qualified agent.

(*c*) 1. Failure to have the abbreviate recorded does not affect the validity of the sequestration. (2 B. C. 325.)

2. Where the abbreviate was neglected to be lodged, the Court refused to order it to be lodged and recorded. (*Tolmie*, 26th Nov. 1853.)

3. The Court authorised the "Keeper of the Record" to receive *it*—reserving all objections to any party having interest against its validity, and declaring that no part of the expenses fall against the estate. (A. B., 20th Nov. 1858.)

4. In a later case of an omission, the Court granted warrant to the Keeper to receive the abbreviate and record it, and to write the certificate. (*Allan*, 6th June 1861.)

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(*d*) The effect of an inhibition is to incapacitate the debtor from voluntarily granting any deed or incurring any debt that may affect his heritable estates in any way to the prejudice of the inhibiting creditor. (2 B. C. 141.)

(*e*) The effect of citation in an adjudication is to render the heritable estates embraced in the summons litigious—*i. e.*, incapable of alienation in any way whatever by the debtor to the prejudice of the adjuding creditor. (2 B. C. 152, 154.)

(*f*) 1. Failure to insert a notice of the award of sequestration was held not to warrant a recall thereof. (*Gray*, 2d Feb. 1844.)

2. Where there occurred an error in the Gazette notice of the bankrupt's name, on a petition by bankrupt and concurring creditor, the Court granted new authority to advertise and hold meetings. (*Fife*, 17th Feb. 1844.)

3. The same where there was an omission to insert in 'London Gazette.' (*Garden*, 18th July 1848; *Ross*, 27th Feb. 1852, 1 Stuart, 427; *Tolmie*, *supra.*)

4. Also where hour of meeting omitted. (*Von Rotberg*, 22d Dec. 1876.)

5. And where meeting appointed to be held on an earlier day than allowed by s. 67. (*Watt*, 10th March 1877.)

6. Where bankrupt failed to forward abbreviate, and also to advertise, the Court refused *de plano* to rectify the omission, but ordered intimation on the walls, &c. (*Morrison*, 21st Jan. 1874.)

(*g*) This means the 'Edinburgh Gazette' (s. 4).

Ranking of Claims.

1ST, GENERAL RULES AS TO VOTING AND RANKING FOR PAYMENT OF DIVIDENDS (*a*).

Creditor claiming must produce oath.

XLIX. To entitle (*b*) a creditor (*c*) to vote (*d*) or draw a dividend (*e*) he shall be bound to produce (*f*) at the meeting, or in the hands of the trustee, an oath (*g*) to the effect and taken in manner herein-before appointed (*h*) in the case of creditors petitioning for sequestration, and the account and vouchers (*i*) necessary to prove the debt (*j*) referred to in such oaths.

(*a*) The provisions in the Statute for the ranking of creditors are matters of remedy, and fall to be applied although the debt was contracted in a country where the laws of ranking in bankruptcy are different. (*Lusk*, 29th June 1843.)

(*b*) 1. The production of the oath and vouchers, while *necessary* to entitle the creditor to vote and rank, is not sufficient for that end. There are other requisites. (*Vide* QUALIFICATIONS OF CREDITORS, par. 294, &c.)

2. The fact of a creditor being conjunct or confident with the bankrupt is no objection *per se* to his vote. (*Mowbray*, 18th May 1793; *Furlong*, 1st Feb. 1809, 2 B. C. 366.)

3. Neither is an interest adverse to the general body of creditors an objection. (*Vide* s. 68, note *i.*)

(*c*) 1. The word "creditor" includes companies, &c. (s. 4).

2. There may sometimes be two creditors in the same debt, such as the principal creditor and the cautioner. But the latter is not entitled to be ranked

as well as the creditor, as there can be no double ranking for the same debt (*Anderson*, 17th March 1876), although the ranking of the creditor for the full debt will not affect the cautioner's lien over a special fund for his indemnification (*Jamieson*, 25th March 1875).

(*d*) The word "vote" includes consent to a composition or discharge, as also a dissent from them (s. 4).

(*e*) The expression "dividend" applies to the dividend of a creditor, whether ordinary or preferable, as will be seen by referring to s. 126, which sets forth that the trustee shall "complete the list of the creditors entitled to draw a dividend, specifying the amount of their debts, with interest thereon to the date of the sequestration, and distinguishing whether they are ordinary creditors, or preferable, or contingent." It is plain, therefore, that all the creditors must lodge an oath and claim, whether they be ordinary creditors merely, or preferable creditors, as arresters or inhibiters, or privileged creditors, as physicians or servants. And if the claim is for a preference, the creditor must specially set it forth in his oath.

(*f*) 1. If vouchers are not produced, no matter from what cause, the creditor cannot vote (s. 50), but if they have once been produced the creditor may continue to vote, though they have been borrowed up (*Woodside*, 15th July 1847; *Watson*, 22d Feb. 1848). Where a bill had been the ground of debt in awarding sequestration, and the creditor set forth in his affidavit that it was retained by the agent in that proceeding, it was held by the Lord Ordinary (Cunninghame) and acquiesced in, that the bill was truly in the hands of the Court, and the vote was sustained (*Poynter*, 9th March 1839). *Vide* s. 123, note *b*, as to effect of non-production of vouchers in the ranking.

2. In a competition for a new trusteeship, the Court allowed new affidavits to be given in, where the former oaths and productions had been destroyed by fire while they were in the possession of the former trustee, and sustained the votes—the sederunt-book showing that the creditors who produced them had been allowed previously to vote and draw a dividend. (*Galloway*, 19th Dec. 1849.)

(*g*) 1. A creditor is not limited to one affidavit. He may vote on three separate oaths, each upon a different debt, and none of them bearing any reference the one to the other. (*Wilson*, 21st Dec. 1844.)

2. There is no necessity of a claim separate from the oath (2 B. C. 336), nor even a claim in the oath, for the Statute makes no distinction between them (s. 51 and 126, &c.); and in none of the sections prescribing the requisites of oaths is there any mention of "claim" (s. 22, &c.) But if a preference is to be claimed, it must be *expressly* done.

3. One oath may serve for petitioning, voting, and ranking, but it must be adapted to each of these cases.

4. "Oath" includes affirmation. (13 & 14 Vict. c. 21, s. 4.)

(*h*) *Vide* s. 21, 22, 23, 24, and 25, as to requisites of oaths.

(*i*) *Nature of Vouchers and Limits of Inquiry.*—There is a difference between vouchers for petitioning and voting, and vouchers for ranking, as far as regards the extent of inquiry into their validity. As to the latter class of cases, there are no limits to the investigation beyond what the law allows in an ordinary lawsuit; but in the case of vouchers for petitioning and voting, the objections to them must be capable of immediate verification (*vide* Evidence of QUALIFICATIONS OF CREDITORS, *antea*, par. 294, &c.) The above section applies to

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vouchers used for voting and ranking, but by s. 21 the same rule applies to vouchers for petitioning. In regard to the following cases it is to be remarked that, with few exceptions, they were decided under former Statutes. Those prior to 1839 were decided under 54 Geo. III. c. 137, s. 15, which requires "production of the grounds of debt or a certified copy of the account;" while those up to 1856 were decided under 2 & 3 Vict. c. 41, s. 11, which is the same as the one now under consideration.

(I.) *Vouchers for Petitioning.*

1. A bill by a partner in name of the company granted after dissolution, is not a good voucher. (*Snodgrass*, 16th Jan. 1846; *Gordon*, 14th June 1851.)

2. A document bearing an examination of accounts "which I am to pay you on demand," unstamped, held bad (*Scott*, 23d June 1847). Observed in this case that an acknowledgment for money loans is not *in re mercatoria*, and requires to be either holograph or tested. (*Vide Laidlaw, infra.*)

3. Date of bill erased, held bad. (*M'Rostie*, 2d March 1850.)

4. In account-current produced, credit was given for balance of another account, but there were no details; held good. (*Elder*, 12th June 1850.)

5. A call made under Joint Stock Winding-up Act against the executor of a deceased partner is not a debt of the deceased, and consequently will not authorise sequestration of his estates—the subscribed capital having been all paid up, and the company having been solvent at his death (*Wright*, 20th Nov. 1856; aff. 20th Feb. 1860). This occurred under 2 & 3 Vict. c. 41, s. 4, but the enactment in the present Statute is the same.

6. The balance on a joint-adventure account is not sufficient. (*Knowles*, 1st Feb. 1865.)

7. But an account for joiner-work charged according to measurements produced, held good. (*Knowles, supra.*)

8. And an allegation that on a just accounting the debt would be extinguished, found not relevant. (*Knowles, supra.*)

9. The Court refused recall of a sequestration, although it was alleged that the bill produced as a voucher was antedated. (*Cumming*, 30th Nov. 1866.)

10. An entry in an account, "To cash lent you," and another, "To amount of goods," held insufficient. (*Ballantyne*, 29th Jan. 1867.)

(II.) *Vouchers for Voting.*

1. A vote by a father on a bill in the sequestration of the company of which his son was a partner, though liable to suspicion, was sustained. (*Furlong*, 1st Feb. 1809.)

2. A cash-credit bond, and stated account in terms of it, held sufficient. (*Murray*, 22d June 1821; *vide Miller*, 27th June 1848.)

3. The Justice of the Peace need not sign account annexed to oath (*Turnbull*, 1st March 1828), unless it is to be held as part of the oath (*M'Cubbin*, 28th June 1850).

4. An account "to goods as per invoice," held bad. (*Hair*, 9th March 1830.)

5. A claim on account of intromissions by the bankrupt with an estate, conform to a subscribed state, and upon the promises assumed and founded on in a depending action, held good. (*Paul*, 13th Feb. 1834, aff. 14th June 1834, 7 W. S. 462; *vide King*, 24th Jan. 1828.)

6. Where a claim was counted in various proceedings, held, after the lapse of twenty years, that bankrupt was not entitled to object on the ground of vagueness in the account. (*Duncan*, 3d June 1834.)

7. Certain items objectionable under the Tippling Act. The claim restricted, but *quoad* the balance sustained. (*Givan*, 2d Dec. 1837.)

8. A creditor may found upon an open account although he holds a bill which is not due for a portion of the account. (*Johnston*, 18th July 1840.)

9. Where a creditor in his oath founded on an open account, and at the end of it a deduction was made of £100 contained in a bill granted for part of it, and then the amount of the bill itself was added, but the bill was not due and no deduction of interest was made, while the bill was produced at the meeting; held that the account was a good voucher, and that these cross entries did not injure it. (*Johnston, supra.*)

10. Not necessary to sign the vouchers (*Cullen*, 16th July 1842) nor accounts (*Woodside*, 15th July 1847).

11. Acknowledgments of debt to near relations granted on eve of sequestration, rejected. (*Cullen, supra.*)

12. Where a document was stamped in the course of a competition, it was held that the stamping was retroactive. (*Mories*, 24th Nov. 1843.)

13. An acknowledgment by the bankrupt to his brother-in-law the day before sequestration appended to a state of money loans, and not tested or holograph; claim rejected. (*Laidlaw*, 27th Jan. 1844.)

14. Where claim for goods sold and vouched by the acknowledgment of the bankrupt, but without any account or particulars, it was rejected, Lord Medwyn observing, "It is obvious that there must have been some accounts or other vouchers, and that these ought to have been produced" (*Aitken*, 14th Feb. 1846). And after vote, creditor not allowed to produce additional vouchers (ibid.)

15. The bill produced being drawn by bankrupt on claimant, though sworn to be accommodation to bankrupt, and paid by claimant, held to be no voucher. (*Dyce*, 19th Dec. 1846.)

16. A holograph letter shortly before sequestration, acknowledging a debt, held not to prove its own date, and not such a document as creditor should have. Vote rejected. (*Dyce*, 28th May 1847.)

17. Claim for a penalty under an agreement without specifying actual damage, held bad. (*Anderson*, 7th July 1847.)

18. In an oath a debt was deponed to "conform to account signed by the deponent as relative hereto," and in the account annexed an item was for a bill dated 3d December, while the bill produced was dated 3d November; held bad. (*Anderson, supra; Dyce*, 19th Dec. 1846.)

19. A vote by a trustee rejected for non-production of his act and warrant. (*Anderson*, 9th July 1847.)

20. In a riding-master's account, a charge was made for price of a horse sold, but the day of the month not given—also an item for "keep of brown (*horse* omitted) to stand at livery at 20s." Objections repelled. (*Woodside*, 15th July 1847.)

21. In an oath the creditor founded on an account as "herewith produced and subscribed by the deponent," while the account, which was on the same paper, was not so subscribed, but was initialed by the magistrate; held that the account was sufficiently identified, and creditor allowed to vote. (*Woodside, supra.*)

22. While the account annexed contained "per estimate," and no estimate produced, held bad. (*Woodside*, 15th July 1847.)

23. Claim upon I O U to law agent, granted shortly previous to sequestration, held bad. (*Gascoyne*, 10th Dec. 1847.)

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24. In claiming on the estate of a cautioner for a bank manager, sufficient to produce bond of caution, with statement of loss from a large number of bills specially mentioned, or their proceeds, if paid, not being forthcoming. But the bank's claim for overdrafts by customers repelled, as the details not given and the books and vouchers not produced. (*Forrest*, 23d Dec. 1848.)

25. An account undergone triennial prescription is not a voucher. (*Wink*, 8th March 1849.)

26. Claim for rent rejected, where no lease nor voucher produced, and the creditor merely deponed that the bankrupt was tenant under the creditor's predecessor, and that the rent was "moderately estimated" at the sum claimed. (*Wink*, 8th March 1849.)

27. Neither is a prescribed bill a good voucher (*Lockhart*, 12th July 1849), nor promissory-note (*Nisbet*, 17th June 1856).

28. An account said, "Amount of sugars sold and delivered per invoice," but the invoices produced being unsigned; held good. (*Kinnear*, 14th Nov. 1849.)

29. Where one item of an account was unvouched, opinion that claim may be sustained *quoad ultra*. (*Kinnear, supra.*)

30. A statement of calls made by a railway company, and excerpt of minute of directors making the calls, not sufficient vouchers—the register of shareholders not being produced. (*Kinnear, supra.*)

31. Decree *cognitionis causa* obtained in absence against next of kin of a deceased bankrupt is not a sufficient voucher. (*Turnbull*, 27th June 1850.)

32. Bills vitiated in sum and place of payment, one having "teen" added to the word "nine," and the other having the place of payment deleted. Votes rejected. (*M'Cubbin*, 28th June 1850.)

33. Where a written lease was for one year and the tenant remained upon tacit relocation, held that in claiming for subsequent rents he must produce the lease. (*Menzies*, 5th June 1851.)

34. Where a bank claimed upon a cash account which began with a balance in favour of the bankrupt of a former account, but produced no voucher or docquet relative to the balance, held to be an incomplete account, and vote rejected. (*Low*, 10th July 1851.)

35. A claim upon an account, part of which was prescribed, and the remainder exhausted by a security stated as held for the account, rejected. (*Low*, 10th July 1851.)

36. In state of debt annexed to the oath, an error in giving date of granting bill not fatal, the date when due being correctly given. (*Foulds*, 12th July 1851.)

37. Where the account contained certain slump items for "postages and cash" but no vouchers, and also items for disbursements without the receipts, rejected, although the account was signed by the bankrupt as correct. (*Samson*, 18th July 1851; *vide Anderson*, 9th July 1847.)

38. A factor *loco tutoris* not bound to produce his act and decree. (*Aitken*, 28th Feb. 1852.)

39. Bill dated two years before to the mother-in-law of the bankrupt, and not operated on till three days before bankruptcy, and no information in the oath as to the origin of the debt, held suspicious and rejected. (*Anderson*, 13th June 1852.)

40. A bill was blank indorsed to A., who ordered diligence; the contents were paid to the messenger by B., who got the bill, but without any new indorsation or any assignation. Held a good voucher to B. (*Nicoll*, 20th Dec. 1855.)

41. Where the brokers under a marine policy did not produce it, the vote held bad. (*Murray*, 15th Nov. 1856.)

42. Held that it was not a fatal objection to the vote that the claim and oath contained an item which was not vouched. (*Chalmers's Trustees*, 12th May 1860.) SECT. 50.

43. A trust disposition without confirmation is a good title to enable the trustees to vote. (Ibid.)

44. While an account of a "tradesman" is sufficient, held that a statement of items by an "artist" for "paintings" and "services" was not. (*Wiseman*, 5th March 1870.)

45. Decree in absence within sixty days of bankruptcy at the instance of a brother of the bankrupt, rejected. (*Dow*, 25th Nov. 1875.)

(III.) *Vouchers for Ranking.*

1. In 1827 a farmer died, his son taking the lease and his daughters the moveables. The seed of that year's crop was taken from the crop of 1826, and the labour performed by the horses belonging to the daughters. Thereafter the stock was sold to the son, and no mention made of the supply of the seed and labour. No money was ever paid. In 1842 the son died, and his estates were sequestrated in 1846. The Court allowed a proof. (*Mackintosh*, 4th July 1849.)

2. A state made up by a professional accountant of the intromissions with the funds of a savings bank by the cashier in order to rank on his estate, with production of the books and accounts of the bank, held sufficient. (*Forbes*, 2d July 1851.)

3. A holograph writing acknowledging receipt of £500 in loan, held not to be *in re mercatoria*, and not to prove its date. (*Purvis*, 13th May 1869.)

(*j*) In ranking for a preference, evidence of the *debt* was produced, but not the inhibition or assignation on which the *preference* was founded. Allowed to produce them afterwards, and observed that the trustee ought to have called for them (*Walker*, 17th Dec. 1853). This occurred under s. 11 of 2 & 3 Vict. c. 41, which on this point is the same as the above.

Oath in cases where accounts and vouchers are not in creditor's possession.

L. If the creditor (*a*) be not in possession of such accounts and vouchers previously to the period herein-after assigned for lodging claims with a view to a share in any dividend (*b*), he shall state, in his oath (*c*), the cause of the said accounts and vouchers not being produced, and in whose hands, to the best of his knowledge, the same are (*d*), which oath shall entitle him to have a dividend set apart till a reasonable time (*e*) be afforded for production thereof, or for otherwise establishing his debt according to law (*f*); but he shall not be entitled to act or vote till such production be made, or the debt established as aforesaid; and the trustee shall, on production of the oaths and grounds of debt, mark the same with his initials (*g*), and make an entry thereof in the sederunt-book (*h*), and of the date when the same were produced, and, if required, he shall return to the creditor the grounds of debt (*i*).

N.B.—*The above section is so far the same as s.* 11 *of* 2 *&* 3 *Vict. c.* 41, *as to render the following cases quite applicable.*

(*a*) The word "creditor" applies to companies, &c. (s. 4).

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(*b*) *Vide* s. 123 and subsequent sections.

(*c*) Or affirmation. (13 & 14 Vict. c. 21, s. 4.)

(*d*) 1. Of course if the case does not admit of vouchers—*e.g.*, a claim of damages—the creditor will depone to that effect.

2. Where a creditor did not state where the vouchers were, the Court would not order a dividend to be set apart. (*Taylor*, 11th Jan. 1848.)

3. Where in an account there was an item "to amount of account rendered, £435, 10s.," and the account was not produced, nor any reason assigned for its non-production, rejected, and no dividend ordered to be set apart. (*Halliday*, 11th July 1848.)

4. Held under the same clause (s. 11) of 2 & 3 Vict. c. 41, that a decree *cognitionis causa* against the next of kin, and to which action the trustee was called as a party, but did not appear, was sufficient *prima facie* evidence to entitle the creditor to have a dividend set apart, and the state of accounts investigated. (*Liston*, 15th July 1853.)

(*e*) What is a "reasonable time" for production of vouchers or establishing the debt, is a question of circumstances.

(*f*) The creditor may raise an action against the bankrupt notwithstanding the sequestration, in order to constitute his debt, calling the trustee as a party. (*Vide* s. 123, note *b*.)

(*g*) Failure by trustee to mark the vouchers does not disqualify the creditor from voting. (*Stewart*, 29th June 1865.)

(*h*) An entry in sederunt-book and a corresponding marking on the oath and vouchers by the trustee's clerk, held sufficient evidence that the vouchers had been produced to the trustee. (*Stewart, supra.*)

(*i*) *Vide* s. 49, note *f*.

Provision for correction of oath.

LI. When it shall appear to the Sheriff (*a*) or to the trustee that the oath (*b*) or claim of any person produced with a view to voting or ranking, and drawing a dividend on the sequestration, is not framed in the manner required by this Act, the Sheriff or trustee, as the case may be, shall call (*c*) upon such person, or his agent or mandatory (*d*), to rectify his oath and claim, pointing out to him wherein it is defective; and unless such person or his agent or mandatory shall thereupon make such alteration (*e*) upon his oath and claim as may be necessary in order to rectify the same, the Sheriff or trustee, as the case may be, shall disallow or reject such oath and claim: Provided always, that when the failure to comply with the provisions of this Act shall appear to have been made for some improper or fraudulent purposes, or where injury can be qualified by the other creditors or any of them in respect thereof, it shall not be incumbent upon the Sheriff or trustee to give such person an opportunity to rectify his oath and claim as aforesaid.

(*a*) Or Sheriff-Substitute (s. 4; *vide* s. 170, note *e*).

(*b*) Or affirmation. (13 & 14 Vict. c. 21, s. 4.)

(*c*) Question whether it is necessary to pronounce an interlocutor. (*Latta*, 28th Nov. 1865; *vide Dow*, 23d Feb. 1875.)

(*d*) This applies to the case of the oath being made by the agent or mandatory (s. 23). (*Vide Latta*, 28th Nov. 1865.)

(*e*) The correction must be upon oath. (*Gibson*, 17th Dec. 1853.)

Creditors may vote and rank for principal and interest to date of sequestration only.

LII. A creditor who has a claim or a debt due shall be entitled to vote (*a*) and rank for the accumulated sum of principal and interest to the date of the sequestration, but not for any interest accruing after the date of the sequestration, and if the debt is not payable till after the date of the sequestration, he shall be entitled to vote and rank for it only after deduction of the interest from that date, and he shall also be liable to deduction of any discount beyond legal interest to which his claim is liable by the usage of trade applicable to it, but he shall not be bound to specify separately in his oath or claim for his debt the amount of any interest due thereon or of any interest or discount deducted therefrom, or to specify therein any accumulated sum of principal and interest (*b*), and if there be any residue of the estate after discharging the debts ranked he shall be entitled to claim out of such residue the full amount of the interest on his debt in terms of law (*c*).

(*a*) As to interpretation of word "vote," *vide* s. 4.

(*b*) This is an important variation from the Statute of 2 & 3 Vict. c. 41, s. 32, which required the creditor, in addition to setting forth the principal debt, to specify in his oath the amount of the interest, and also of the accumulated sum, and also to specify the amount of any discount to be deducted, and also of the balance.

(*c*) It is supposed that the surplus will fall to be applied under the sequestration towards payment of the interest without any new process of law.

Valuation of claim depending on a contingency.

LIII. When the claim of a creditor depends upon a contingency (*a*) which is unascertained at the date of lodging his claim, he shall not be entitled to vote (*b*) nor to draw a dividend in respect of such contingent debt, but he may (*c*) apply to the Sheriff (*d*), if the trustee has not been elected, or, if elected, to the trustee, to put a value on such debt, and the Sheriff or trustee (as the case may be) shall put a value thereon as at the date of such valuation; and on such value being fixed such creditor shall be entitled to vote and draw dividends in respect of such value, and no more: Provided that if such contingency have taken place before the debt has been valued, such creditor may vote and draw dividends in respect of the amount of the debt, but the same shall not disturb any former dividends allotted to other creditors; and

Sect. 54. when such application is made to the Sheriff or trustee, notice thereof shall be given to the bankrupt and petitioning or concurring creditor; and the judgment of the Sheriff or trustee shall be subject to review, and any creditor who has claimed (*e*) on the estate may appeal, or appear and be heard on any appeal (*f*).

(*a*) 1. As to different kinds of contingent debts, *vide* s. 14, note *d*.

2. An indorsee on a current bill, wherein the bankrupt is drawer, found to be a contingent creditor *quoad* him. (*Morrison*, 28th Jan. 1832; *Gordon*, 14th June 1851.)

3. A claim of relief under a clause of warrandice held a contingent claim, and a dividend set apart, although a reduction of the title was unsuccessful, but in which an appeal to the House of Lords was intimated. (*Garden*, 15th June 1860.)

(*b*) The word "vote," in addition to its ordinary meaning, includes a consent to, or a dissent from, an offer of composition, and the debtor's discharge (s. 4). A contingent creditor cannot petition, or concur in a petition, for sequestration (s. 14); but with these exceptions, a contingent creditor has all the privileges of any other creditor.

(*c*) This step is optional, so, instead of taking it, he may apply to have his dividend set apart (s. 129).

(*d*) Or Sheriff-Substitute (s. 4).

(*e*) *Vide* s. 58 and 14, note *d*.

(*f*) Of course a claim must be lodged (s. 49).

Valuation of claim on annuity.

LIV. No creditor in respect of an annuity granted by the bankrupt shall be entitled to vote (*a*) and draw a dividend until such annuity shall be valued, but he may, if the trustee has not been elected, apply to the Sheriff (*b*), or, if elected, to the trustee, to put a value on such annuity; and the Sheriff or trustee, as the case may be, shall put a value on the annuity, regard being had to the original price given for the annuity, deducting therefrom such diminution in the value of the annuity as shall have been caused by the lapse of time since the grant thereof to the date of the sequestration (*c*); and such creditor shall be entitled to vote and draw dividends in respect of such value, and no more: Provided always, that when such application is made to the Sheriff, notice thereof shall be given to the bankrupt and the petitioning or concurring creditor; and the judgment of the Sheriff or trustee shall be subject to review (*d*), and any creditor who has claimed (*e*) on the estate may appeal, or appear and be heard on any appeal (*f*).

(*a*) For meaning of word "vote," *vide* s. 4.

(*b*) Or Sheriff-Substitute (s. 4; *vide* s. 170, note *e*).

(*c*) In a settlement by composition the value of an annuity was fixed as at date of sequestration, and the Northampton Tables were taken to fix the amount by Lord Ordinary, and acquiesced in. (*Ferguson*, 16th Nov. 1836.)

(*d*) The creditor may vote, though the deliverance by the Sheriff is under appeal. (*Watson*, 27th June 1848.)

(*e*) *Vide* s. 49, 50, and 58.

(*f*) A claim must be lodged (s. 49).

Creditor not to sue cautioner after the date of sequestration.

LV. When any person is bound as cautioner for payment of such annuity, it shall not be lawful for the creditor therein to sue or charge such cautioner after the date of the sequestration, except for the value fixed as aforesaid, and the arrears of annuity and interest thereon (*a*); and on such cautioner making payment of such value and arrears to the creditor, and the lawful interest thereon, he shall be discharged of all liability for such annuity, and he may thereupon enter a claim in the sequestration for the sum so paid, and vote and draw dividends thereon; provided that if such cautioner shall not pay the sum so fixed, and arrears and interest as aforesaid, before any payment of the annuity subsequent to the fixing thereof becomes due, he shall be bound to make payment of the said annuity, and all subsequent annuities, until he shall make payment of the sum so fixed, arrears of annuity and interest as aforesaid, deducting always such dividends as the creditor shall have received before full payment as aforesaid.

(*a*) This privilege appears limited to where the annuitant has obtained the annuity valued under the Act.

Obligant not freed from liability for debt, in respect of any vote given or dividend drawn by the creditor.

LVI. When a creditor has an obligant bound to him along with the bankrupt for the whole or part of the debt, such obligant shall not be freed from his liability for such debt in respect of any vote given or dividend drawn by the creditor, or of his assenting to the discharge of the bankrupt, or to any composition (*a*); but such obligant may require and obtain, at his own expense, from such creditor, an assignation to the debt, on payment of the amount thereof, and in virtue thereof enter a claim on the said estate, and vote and draw dividends, if otherwise legally entitled to do so.

(*a*) At common law, a creditor, by accepting a composition from the principal debtor in discharge of the debt, liberated the cautioner (1 B. C. 359). But if he first call upon the cautioner to pay the debt, and take the principal debtor in his own hand, and he fail to do so, the creditor may safely take the composition, provided he reserve recourse against the cautioner in so doing (*Smith*, 22d Nov. 1821). At the same time, the creditor is not bound to rank on the principal debtor's estate (*Anderson*, 25th May 1811, F. C.; *Ivory's Ersk.*, b. 3, t. 3, s. 66, note 173). The above section puts the law on a better footing; for the creditor is not debarred from taking measures against

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the principal debtor without losing recourse upon the cautioner, while the cautioner, if he is not satisfied, can pay up the debt, and take these measures himself.

Liability of creditors for expenses.

LVII. No person shall, by merely lodging an oath and claim (*a*), or being ranked or receiving payment of a dividend, or appearing or voting at a meeting in a sequestration as a creditor, be liable for any claim by the agent or other person employed by the trustee for money advanced, or expense incurred, or remuneration in relation to the affairs of the estate, reserving to the agent or other person so employed right to payment out of the estate and from the trustee by whom he may have been employed, in so far as the same may be competent to him; and no trustee shall have relief in respect of such payment against such creditor, reserving to such trustee relief against the estate, and against those creditors or others who may on other grounds be liable in relief (*b*).

(*a*) 1. The expression "oath and claim" means the oath lodged in terms of s. 49. (*Vide* s. 49, note *g*.)

2. "Oath" includes affirmation. (13 & 14 Vict. c. 21, s. 4.)

(*b*) Prior to Statute 2 & 3 Vict c. 41, creditors often suffered a loss by ranking in a sequestration, instead of receiving a benefit; for they were held personally liable for the expenses of the sequestration, if there were no funds to pay them (*Howden's Trustee*, 10th Feb. 1835; *Gowan*, 19th Feb. 1835). The above section takes away this responsibility, even though the creditor vote under the sequestration.

Oaths not to supersede other evidence.

LVIII. In no case shall oaths of verity or credulity supersede production of legal evidence, when required, in any discussion before the Court of Session, the Lord Ordinary, the Sheriff, or the trustee (*a*).

(*a*) As to nature of vouchers and extent of scrutiny in voting, *vide* EVIDENCE OF CREDITOR'S QUALIFICATIONS.

2D. SPECIAL RULES AS TO VOTING.

Valuation of securities for voting.

LIX. If a creditor hold a security (*a*) for his debt over any part of the estate of the bankrupt, he shall, before voting (*b*), make an oath (*c*), in which he shall put a specified value (*d*) on such security, and deduct such value from his debt, and specify the balance, and if the estate over which the security extends be sold, he shall specify in his oath the free proceeds which he has received or shall be entitled to receive therefrom, and specify the balance due after deduction thereof, and he shall be entitled in any case to vote in respect of the balance, and no more, without prejudice to the amount of his debt in other respects; and in questions as to the disposal or management of the estate subject to his security he shall be entitled

to vote as a creditor for the full amount of his debt, without making any such deduction. SECT. 60.

N.B.—*The following cases, though pronounced under former Statutes, still apply under the above section.*

(*a*) 1. A promissory-note by the bankrupt is not a security. (*Bow*, 1st June 1811, F. C.)

2. An arrestment is a security (*Woodside*, 15th July 1847; *Gibson*, 17th Dec. 1853); and so is an inhibition (*Hay*, 5th Feb. 1850).

3. The oath is incorrect if the creditor holds three securities for separate debts, and does not value them separately, but *in cumulo*. (*Smith*, 6th Feb. 1849.)

4. A party entailed an estate, and died leaving personal debts. The son was sequestrated, and a personal creditor of the entailer, in voting on the estate of the son as liable for his father's debts, held bound to value and deduct as a security his right of payment out of the entailed estate. (*Smith, supra; vide M'Leod*, 1st Feb. 1851.)

5. Opinion that a law agent's hypothec over title-deeds is a security. (*Elder*, 12th June 1850.)

6. A medical man, in claiming to vote, is not bound to value and deduct, though his debt be privileged. (*Low*, 10th July 1851.)

7. It is enough to value several securities *in cumulo*, if they be all held for the same debt. (*Foulds*, 12th July 1851.)

8. As to interpretation of "security," *vide* s. 4.

(*b*) Although the creditor *has* voted, the Sheriff may still call on him under s. 51 to rectify his oath. (*Latta*, 28th Nov. 1865.)

(*c*) Or affirmation. (13 & 14 Vict. c. 21, s. 4.)

(*d*) It is necessary that a value be put on the security; and it is no answer to say that it is worthless. A nominal value may be put on it, or the creditor may even value it at nothing (*M'Ewan*, 7th Dec. 1842; *Hay*, 5th Feb. 1850; *Gibson, supra; Aitken*, 10th June 1848). But in *M'Kay*, 19th Nov. 1865, an opinion was expressed by the late Lord President that it is not necessary to value an "incompetent and inhabile" arrestment. And where an arrestment was ineffectual by s. 103, and the creditor deponed that he put "no value on it," held good (*Latta*, 28th Nov. 1865).

Valuation of obligations of co-obligants with bankrupt.

LX. When a creditor has an obligant bound with but liable in relief (*a*) to the bankrupt, or holds any security (*b*) from an obligant liable in relief to the bankrupt, or any security from which the bankrupt has a right of relief, such creditor shall, before voting (*c*), make an oath (*d*), in which he shall put a specified value on the obligation of such obligant, and on such security, to the extent to which the bankrupt is entitled to relief, and he shall deduct such value from his debt, and specify the balance; and he shall be entitled to vote (*e*) in respect of such balance, and no more, without prejudice to the amount of his debt in other respects.

N.B.—*The above is the same as s.* 34 *of* 2 *&* 3 *Vict. c.* 41, *under which the following cases were decided.*

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(*a*) 1. The creditor is not bound to value and deduct the obligation of a co-obligant, who may, *ex facie* of the documents, be liable in relief to the bankrupt, provided he swear that *in reality* the co-obligant is not so liable in relief. In two cases it was held otherwise (*Givan*, 2d Dec. 1837; *Mackersy*, 7th March 1829). But in the case of *Dyce*, 11th March 1847, a vote was admitted on a bill where the bankrupt was drawer, and where no valuation of the security of the acceptor was given; but the oath added, "that the bill was granted for the accommodation of the bankrupt, and that the acceptor is not bound to relieve the bankrupt of the debt contained in and constituted by the bill, or any part thereof." The Sheriff-Substitute, in respect of the oath, sustained the vote, and the whole Court, by a majority, affirmed. "In this stage of the proceedings, it is the oath, and it alone, apart from what may afterwards turn out on a more thorough investigation of evidence, to which the Statute has, and was intended to have, regard. The creditor is to qualify his claim, and that is by swearing to its value, after deducting co-obligants, to the extent to which the bankrupt is entitled to relief: the creditor's knowledge of the extent is to be set forth in the oath, and which is necessarily to be taken in the first instance as its true and only measure." (*Per Lord Ivory.*)

This case proceeds on the correct principle, that although a creditor is or is not to specify value, and deduct according as there may or may not be a claim of relief competent to the bankrupt, yet he (the creditor) is not bound to *prove* that there exists or does not exist a well-founded right of relief. It is a matter of *swearing*, not a matter of *fact*. The Court will not look at evidence on the subject. It is quite different from the statutory requisite, that the creditor shall produce such accounts and vouchers as shall be necessary to *prove* his debt (s. 49); for there the creditor must not only swear to his debt, but produce evidence of it, and therefore where the documents produced as evidence do not prove, but disprove the debt—as in *Paterson*, 2d June 1847, where the drawer of a bill produced the bill as evidence of a debt against the indorsee—the claim will be rejected.

2. A bank claimed on the estate of the representative of a cautioner under a bond of caution for the intromissions of their manager, and, in a statement of losses, set forth various parties to whom bills had been discounted, and over-advances made. Held not bound to value and deduct the obligations of these parties. (*Forrest*, 23d Dec. 1848.)

3. Where, during the temporary insanity of the bankrupt, his brother authorised a law agent to continue to act for the lunatic, held that the brother had incurred no liability for the agent's account—at least not one that required to be valued. (*Wink*, 8th March 1849.)

4. Where a creditor valued at a slump sum the obligation of certain co-obligants on various bills, sustained and held not bound to value their obligation for each bill separately. (*Foulds*, 12th July 1851.)

(*b*) As to interpretation of "security," *vide* s. 4. As to what are securities, *vide* s. 59, note *a*. As to worthless securities, *vide* s. 59, note *c*.

(*c*) *Vide* s. 59, note *b*.

(*d*) Or affirmation. (13 & 14 Vict. c. 21, s. 4.)

(*e*) As to interpretation of "vote," *vide* s. 4.

Valuation of claims against a company

LXI. A creditor on the estate of a company (*a*) shall not be bound, for the purpose of voting on the company's estate, to deduct from his claim the value which he may be entitled to

draw from the estates of the partners; but if he claim on the estate of a partner, he shall, before voting (*b*), in his oath (*c*), put a specified value on his claim against the estate of the company, and also against the other partners thereof, in so far as they are liable to relieve such partner, and deduct such value from his debt, and specify the balance; and he shall be entitled to vote (*d*) as a creditor for the said balance, and no more, without prejudice to the amount of his debt in other respects. Sect. 62, 63. and partners.

(*a*) This includes corporations, &c. (s. 4).

(*b*) *Vide* s. 59, note *b*.

(*c*) Or affirmation. (13 & 14 Vict. c. 21, s. 4.)

(*d*) As to interpretation of "vote," *vide* s. 4.

LXII. It shall be competent to the trustee, with consent of the commissioners (*a*), within two months after an oath (*b*), specifying the value of a security, or obligation, or claim in the several cases before mentioned, has been made use of in voting at any meeting, or in assenting to or dissenting from the bankrupt's composition or discharge; and it shall also be competent to the majority (*c*) of the creditors (excluding the creditor making such oath) assembled at any meeting (*d*), and during such meeting, to require (*e*) from the creditor making such oath a conveyance or assignation in favour of the trustee of such security, obligation, or claim, on payment of the specified value, with twenty per centum in addition to such value; and the creditor shall be bound to grant such conveyance or assignation, at the expense of the estate: Provided that where a creditor has put a value on such security or obligation, he may, at any time before he has been required to convey and assign as aforesaid, correct such valuation by a new oath, and deduct such new value from his debt. Trustee may require a conveyance of security by creditor on 20 per cent addition to his own valuation. Creditor may correct valuation by new oath.

(*a*) 1. This means a majority (s. 4).
2. *Vide Russell*, 19th March 1868.

(*b*) Or affirmation. (13 & 14 Vict. c. 21, s. 4.)

(*c*) This majority means a majority in value (s. 101).

(*d*) *Vide* s. 101, notes *a* and *b*.

(*e*) At a statutory meeting, it was resolved that a creditor who was present should be called upon, "in terms of law," immediately and on payment of the valuation, to assign certain securities which he had valued, but he was not *expressly* offered the 20 per cent additional. Held that this was a sufficient requisition, in terms of 2 & 3 Vict. c. 41, s. 36, which is the same as the above. (*Greig*, 9th June 1853.)

LXIII. The mandatory of any person entitled to vote as a creditor may vote in the absence of such creditor, provided he Mandatories for

SECT. 64. creditors may vote.

exhibit a mandate (*a*); and the vote of such mandatory shall, within his mandate (*b*), be held as the vote of the creditor himself (*c*).

(*a*) 1. The mandates must be in writing. (2 B. C. 349.)

2. Mandates in judicial proceedings need not be holograph or tested. (*Scudamore*, 3d June 1797, D. 8559.)

3. Where the mandate is not addressed to any one, it has been said that possession seems enough to supply the want. (2 B. C. 349.)

4. The address of a mandate which was in the creditor's handwriting was scored, and another name put in by the candidate in whose handwriting the body of the mandate was. Held not fatal. (*Turnbull*, 1st March 1828.)

5. No objection that bankrupt's name was omitted in the mandate—the oath, account, and mandate being all on one sheet. (*Turnbull, supra.*)

6. Nor that the mandate was signed by a company firm, while the oath bore the debt to be due to the partners, without specifying the firm under which they carried on business—the oath and mandate being on one sheet. (*Turnbull, supra.*)

7. Nor that the partner signed his own name to the mandate, instead of the firm's name. (*Turnbull, supra; Glen*, 24th Nov. 1843.)

8. A mandate to a writer in Aberdeen, erroneously designed as "advocate," held good, there being no question as to identity. (*Dyce*, 19th Dec. 1846.)

9. A mandate sustained which was granted by a majority of trustees as assignees of a debt, although their trust-deed not produced—they being incidentally mentioned as a quorum in the assignation. (*Dods*, 3d July 1847.)

N.B.—A majority of trustees in a gratuitous trust is now presumed to be a quorum. (24 & 25 Vict. c. 84, s. 1.)

(*b*) 1. A mandate "to attend, vote, and act at all meetings under the sequestration," does not authorise the mandatory to prosecute an appeal to the Court of Session against the Sheriff's deliverance recalling the resolution founded on his vote. (*Ewing*, 11th Jan. 1860.)

2. A mandate "to attend all meetings of the creditors, particularly any meeting which may be held for determining on any offer of composition, and to vote and act for me thereat as you may think proper," does not authorise the mandatory to agree to a composition at the meeting, and thereafter to grant a letter to the effect that the bond of caution shall be held as null and void, and merely a matter of form, in order to comply with the Statute. (*Morrison*, 16th Feb. 1849.)

(*c*) By the interpretation clause (s. 4), the word "vote," in addition to its ordinary meaning, includes a consent to any offer of composition, and to a discharge of the debtor, and also a dissent from such offer or discharge.

Persons acquiring debts after sequestration not to vote.

LXIV. Any person who shall acquire after the date of the sequestration, otherwise than by succession or marriage (*a*), a debt due by the bankrupt, and the wife of the bankrupt and any trustee for her, shall not be entitled to vote in the election of trustee or commissioners, but in all other respects such person may be ranked as a creditor (*b*).

(*a*) 1. This clause will not apply to a cautioner or co-obligant paying a debt after sequestration. (*Hay*, 5th Feb. 1850.)

2. Nor to the holder of a bill, who had discounted the bill before the sequestration, and retired it after the sequestration. (*Laurie*, 7th June 1848; *vide Watson*, 27th June 1848.) SECT. 65.

(*b*) 1. An assignee does not require to lodge a new oath; intimation to trustee is enough. (*Walker*, 7th Feb. 1835.)

2. In *Samson*, 18th July 1851, the Sheriff rejected the right of a creditor to oppose bankrupt's discharge, as, although his trustee had lodged an oath, yet he had not done so since his retrocession, but Court allowed him still to lodge an oath.

3D. SPECIAL RULES AS TO RANKING FOR PAYMENT OF DIVIDENDS.

Valuation of securities with a view to a dividend.

LXV. To entitle any creditor who holds a security (*a*) over any part of the estate of the bankrupt (*b*) to be ranked in order to draw a dividend (*c*), he shall, on oath (*d*), put a specified value on such security, and deduct such value from his debt, and specify the balance; and the trustee, with consent of the commissioners, shall be entitled (*e*) to a conveyance or assignation of such security, at the expense of the estate, on payment of the value so specified out of the first of the common fund, or to reserve to such creditor the full benefit of such security; and in either case the creditor shall be ranked for and receive a dividend on the said balance, and no more, without prejudice to the amount of his debt in other respects (*f*).

N.B.—*The above is the same as s.* 37 *of* 2 *&* 3 *Vict. c.* 41, *except that it contains the words "any part of," at the beginning, which the old section does not.*

(*a*) 1. As to interpretation of "security," *vide* s. 4. As to what are securities, *vide* s. 59, note *a*. As to worthless securities, *vide* s. 59, note *c*.

2. In claiming on a husband's estate, held bound to value and deduct his *jus mariti* over wife's heritage, which had been conveyed to him by wife and by the husband, together with all his marital rights. (*Borthwick*, 16th July 1844.)

(*b*) 1. Where the creditor accepts a security from a third party, which (by a transaction to which the creditor is not a party) is assigned to the bankrupt prior to sequestration, and thus forms part of his estate, held that the creditor is not bound to value and deduct. (*M'Clelland*, 27th Feb. 1857.)

2. A party entailed an estate upon his son, and died leaving personal debts. The son was sequestrated, and a personal creditor of the entailer, in claiming a dividend on the estate of the son as liable for his father's debts, was held bound to value and deduct as a security the right of payment out of the entailed estate. (*Macleod*, 1st Feb. 1851.)

(*c*) This means a dividend as an ordinary creditor. If he merely claims his preference, he is not bound to value and deduct (*Brown*, 1st Feb. 1849). Opinion that if a creditor claim, and is allowed a preference which does not meet his claim, he may thereafter claim as an ordinary creditor. (*Brown*, *supra*.)

(*d*) Or affirmation. (13 & 14 Vict. c. 21, s. 4.)

(*e*) But this is not to prevent the creditor from realising his security in the meantime, no call having been made by the trustee for a conveyance. (*Henderson's Trustee*, 6th July 1872.)

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(*f*) At common law, a creditor who holds a security over the bankrupt's estate, or the security of other persons, or the property of such persons, is entitled, when a judicial competition arises, whether in a sequestration or ranking and sale, or a process of distribution of proceeds of arrested or poinded effects, to rank on the estate or fund without any deduction of payments after the competition arises, and without any valuation or deduction of securities, and is also entitled to rank on the estates of all co-obligants for the full amount; but only to the effect of getting 20s. per pound (*Black*, 29th Feb. 1840). If, however, the security has been made available, or a payment made to account by any co-obligant *before* the competition arises, then the debt is thus far reduced, and the creditor can only rank for the balance (2 B. C. 532; *M'Dougall*, 5th June 1801, D.; *Right in security*, App., p. 1; *Boswell*, 15th Jan. 1841, 3 D. 352; *Kirkcaldy*, 8th Dec. 1841, 4 D. 202; *Robertson*, 3d July 1823; *Mein*, 6th March 1824; *Farquharson*, 15th May 1832; *Hamilton*, 6th Feb. 1841). These rules of the common law are limited by s. 65 above, and s. 66 below.

Value of claim against a company to be deducted from claim against partners.

LXVI. When a creditor claims on the estate of the partner of a company in respect of a debt due by such company, the trustee on the estate of such partner shall, before ranking such creditor, put a valuation (*a*) on the estate of the company (*b*), and deduct from the claim of such creditor such estimated value, and rank and pay to him a dividend only on the balance.

(*a*) In valuing the estate of a joint-stock company, held that it falls to be valued as consisting of the whole subscribed capital, whether paid up or not. (*M'Clelland*, 19th June 1849.)

(*b*) Where the bankrupt, besides carrying on business here, was partner of a company in England, where the law is that a creditor of a company cannot rank on a partner's estate in competition with the partner's creditors, held, nevertheless, that a creditor in a bill by the company was entitled so to rank on the partner's estate in a sequestration, as this was the law of Scotland. (*Lusk*, 29th June 1843.)

Election and Removal or Resignation of Trustee.

Appointment of meeting to elect a trustee.

LXVII. The Lord Ordinary or the Sheriff, by the deliverance which awards the sequestration (*a*), shall appoint a meeting of the creditors, to be held at a specified hour, on a specified day (*b*), being not earlier than six nor later than twelve days (*c*) from the date of the Gazette notice (*d*) of sequestration having been awarded, at a convenient place (*e*) within the county of the Sheriff awarding sequestration, or to whom the sequestration is remitted, to elect a trustee or trustees in succession, and do the other acts hereinafter provided.

(*a*) *Vide* s. 29 and 30.

(*b*) Where from accidental circumstances a statutory meeting cannot be held at the time advertised, the Court may grant authority to hold another meeting. (*Ross*, 27th Feb. 1852.)

(*c*) 1. Where in consequence of the detention of the packet, the proceedings in a sequestration did not reach Lochmady until after the period for holding the meeting, the bankrupt petitioned the Inner House to appoint a new meeting, and in respect of the difficulty of communication with Lochmady to allow twenty-five days to elapse before the meeting, which the Court granted, and expressed an opinion, but did not order, that intimation of the renewed meeting ought to be given in the Gazette. (*M'Donald*, 9th March 1861.) SECT. 68.

2. As to computation of time, *vide* s. 5.

(*d*) 1. *Vide* s. 48.

(2.) The Gazette referred to is the 'Edinburgh Gazette.' (Act 1860, s. 5, *postea*.)

(*e*) The Court refused to appoint the meetings to take place in a private office (A. *v.* B., 14th December 1847). The meetings are now held in some public hall.

Procedure at meeting for election of trustee.

LXVIII. Creditors or their mandatories, qualified as aforesaid, shall (*a*) assemble at the time and place fixed for the election of trustee, with power to adjourn for such reasonable time as may seem fit, provided such adjournment do not postpone the meeting for the election of trustee beyond the limit of the period within which that meeting is by this Act appointed to be held (*b*); and if two or more creditors shall give notice to the Sheriff of the county, such Sheriff shall attend the meeting and adjourned meetings, and preside; and the Sheriff Clerk or his depute shall also attend, and mark the oaths and productions with his initials, and write the minutes in the presence of the meeting, and enter therein the names and designations of the creditors present, or of the mandatories of creditors, and the amount for which they claim, and any other circumstances which the presiding Sheriff shall judge fit, which minutes the presiding Sheriff shall sign (*c*); and the Clerk shall retain the oaths of the several claimants, subject to the exhibition thereof in his hands, till the election shall be determined, when he shall deliver the same to the trustee; and when the Sheriff is not present the creditors (*d*) shall elect a preses (*e*) and (if the Sheriff Clerk or a depute be not present) a clerk (*f*); and the preses shall mark the oaths and productions with his initials (*g*), and sign the minutes; and the clerk shall, in the presence of the meeting, write the minutes, and enter therein the names and designations of the creditors or mandatories, and the amount for which they claim, and any other circumstances relating to the said meeting which the preses shall judge fit, which minutes the preses shall sign (*h*), and the creditors (*i*) or their mandatories who have produced their oaths and documents of debt, and who have been entered in the minutes, shall then and there elect (*j*) a fit (*k*) person to be trustee, or two or more trustees, to act in succession (*l*), in case of non-acceptance (*m*),

SECT. 68. death, resignation, removal, or disqualification, and in the case of the sequestration of the estates of a company and of the partners, one trustee for all the estates, or separate trustees on the estates of the company and on the estates of all or each of the individual partners (*n*), or trustees in succession as aforesaid; and it shall not be lawful to elect as trustee the bankrupt, or any person conjunct or confident with the bankrupt (*o*), or who holds an interest opposed to the general interest of the creditors (*p*), or whose residence is not within the jurisdiction of the Court of Session (*q*).

N.B.—*The corresponding provisions in previous Statutes are so far similar to the above section as to render the following cases quite applicable.*

(*a*) Where no meeting can take place from want of advertisement, &c., *vide* s. 48, note *b*, and s. 67, note *c*.

(*b*) *Vide* s. 67.

(*c*) 1. The minutes of a meeting are the only evidence of the proceedings, no parole proof being admissible. (*Ogilvie*, 6th Feb. 1810, F. C.; *Smith*, 10th Jan. 1828, Mur.)

2. The word "Sheriff" includes "Substitute" (s. 4; *vide* s. 170, note *e*).

(*d*) This means creditors in value (s. 101) entitled to vote (s. 49, note *b*; also s. 64).

(*e*) An election was held null, there being no preses acting during the latter period of the meeting. (*Anderson*, 12th Dec. 1827.)

(*f*) Where minutes did not show the election of a clerk, a new meeting was ordered. (*Gascoyne*, 19th Jan. 1848.)

(*g*) A bill not having been marked by the preses, is not fatal to the vote. (*Turnbull*, 1st March 1828.) It had been produced at the first meeting.

(*h*) Minutes were held probative, though not signed by the preses till after the meeting was dissolved. (*Lea*, 16th Jan. 1828; *vide* s. 71, note *c*.)

(*i*) 1. This means a majority in value (s. 101) entitled to vote (s. 49).

2. No creditor can vote who has acquired the debt since the date of the sequestration otherwise than by succession or marriage (s. 64).

3. A creditor, having an interest adverse to the general body of creditors, may nevertheless vote for trustee (*Murray*, 22d June 1821; *Campbell*, 29th June 1825; *Blyth*, 8th July 1825); and the fact of being conjunct and confident with the bankrupt is also no objection *per se* (2 B. C. 443).

(*j*) 1. Where no one would accept the office of trustee, the Court authorised the Sheriff Clerk to act. (*Dunsmuir*, 25th Nov. 1801, 2 B. C. 375.)

2. Where certain creditors proposed and voted for the election of one trustee for the estates of a company and partners who were all included in one sequestration, and no objection was stated, held too late for other creditors present, who were creditors of a partner, to propose afterwards a trustee for that partner's estate. (*Cormack*, 23d Nov. 1832.)

3. In electing a trustee, all that the creditors have to do is to vote; it is for the Sheriff to declare the election. (*Miller*, 18th March 1858.)

4. Where the creditors declined to elect a trustee, the Court of Session appointed a new meeting to do so. (*Stewart*, 14th June 1864.)

(*k*) 1. Held a fatal objection, that the candidate had promised a share of his commission to a creditor for his support. (*M'Gowan*, 13th Dec. 1808, F. C.)

2. The Court refused to confirm a trustee under twenty-one years of age. (*Threshie*, 30th May 1815, F. C.)

3. Also an objection that he had written a letter stating that he would rank certain bills which were said to be forged. (*Robison*, 23d Nov. 1827.)

4. Objection sustained that candidate had been endeavouring to get a preference. (*Corsan*, 24th Nov. 1827.)

5. Where an agreement between two candidates to share the commission had been entered into and acted on, held to be *pactum illicitum*, and that, on the trustee's default, the party sharing his commission was not liable *qua* partner. (*M'Taggart's Representatives*, 25th Jan. 1834.)

6. The candidate cannot be elected if he have a personal hostility to the bankrupt. (*Lowe*, 14th Feb. 1835.)

7. A candidate disqualified, who was mixed up with proceedings of the bankrupt and his friends, whereby a debt was purchased, canvassing carried on, and a creditor promised that he would not be a loser if the bankrupt got his discharge, all with a view to the candidate's election. (*Lowe, supra.*)

8. A candidate was rejected who made certain alterations in two oaths and accounts—*i. e.*, tore away the account annexed to one of the oaths and substituted another in its place, and in another oath inserted certain words supplementing the designation of the bankrupt—after they were put into his hands as mandatory, though, as he alleged, it was done merely to correct certain errors. (*Railton*, 8th July 1835; *vide Buchan*, 13th June 1863.)

9. Where a candidate in his own oath put an illusory value on a security, and in a letter which was recovered had acknowledged that he did so to secure the trusteeship, and that it was a common practice, held ineligible. (A. B., 10th June 1837.)

10. It is also a good objection that the candidate acts occasionally as Sheriff Clerk Depute. (*Clark*, 18th Nov. 1847.)

11. It does not appear that the fact of a party being under sequestration is an objection to him as trustee. (*Richmond*, 13th June 1850, 2 B. C. 372.)

12. Where a promise of employment to a creditor was given by a candidate, his election was set aside, and he was held disqualified for re-election. (*Mann*, 1st July 1857.)

(*l*) If from any cause—such as non-acceptance, disqualification, or the like—the first-named trustee is not confirmed, the Court will at once confirm the next in succession, if qualified (*vide* 2 B. C. 375); but if once confirmed, then a meeting must be held to devolve the office on the one next in succession, or elect a new trustee (s. 74).

(*m*) The trustee may decline to accept; and where he does so, and no one has been elected in succession, the Court will order a new meeting for election of trustee, and Gazette notice to be given. (*Mitchell*, 28th Jan. 1860; *vide Jeffray*, 13th June 1828.)

(*n*) 1. No objection to a party being trustee on two estates that they have conflicting interests, whether they are the estates of a company and its partners (*Robison*, 23d Nov. 1827), or the estates of neutral parties (*Allan*, 27th Feb. 1841).

2. There should be separate votes on each estate. (*Vide Stephen*, 4th June 1863.)

(*o*) Conjunct persons are strictly such as these—viz., parents and children,

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brothers and sisters, fathers-in-law and sons-in-law, brothers-in-law and sisters-in-law, and also uncles and aunts, and nephews and nieces. It was thought doubtful whether a cousin was one. It is held that uncle-in-law and nephew-in-law are not conjunct. Confident persons are those who are in a situation of intimate and confidential intercourse with the bankrupt, such as partners in trade, servants, factors, and confidential men of business. (2 B. C. 187.)

(*p*) 1. Adverse interest must, of course, be proved by the objector. (*Reid*, 21st May 1836.)

2. Being a creditor is not *per se* an objection. (2 B. C. 369.)

3. But objection sustained that the candidate had a large and disputed claim against the bankrupt (*Willison*, 11th March 1815). Also, where the candidate had been interim factor, had devolved the management on the bankrupt, and was liable in an accounting to the trustee (*Mowbray*, 13th Nov. 1821). Also, that the candidate had got securities under circumstances that required investigation (*Bisset*, 20th July 1841). Also, that the candidate had been voluntary trustee for the bankrupt, and was afterwards trustee in his cessio, and was liable in an accounting for his intromissions (*M'Farlane*, 29th Jan. 1848).

4. Held a good objection that the candidate is identified with one who is disqualified—*e. g.*, the bankrupt's law agent. (*M'Tavish*, 13th Nov. 1824.)

5. Where the candidate was law agent of the principal creditor, who had an adverse interest, and was the nominee of that creditor: rejected. (*Clark*, 12th Jan. 1847; *Campbell*, 20th June 1840.)

6. Where a rejected candidate held a warrant of imprisonment against the trustee nominated in succession, the latter held disqualified. (*M'Farlane*, *supra.*)

7. Where the candidate was the nominee of a creditor whose vote was sufficient to outvote all the other creditors (he having, however, one other creditor to a small amount supporting him), and the claim being a very suspicious one, but still valid: held that such was no objection, even combined with the fact that the one was Clerk and the other Fiscal of the same court. (*Colville*, 21st Dec. 1850.)

(*q*) No objection that the candidate resides at a considerable distance from the bankrupt property. (*Kerr*, 14th Nov. 1828; *Forrester*, 17th Feb. 1831.)

Judgment of Sheriff as to trustee.

LXIX. If the Sheriff be present at the election of trustee, and there be no competition for the office, or objection stated to the candidate or candidates, he shall, by a deliverance on the minutes, declare the person chosen by the creditors (*a*) to be trustee, and if there be competition, or objections to the candidate or candidates, such objections to the votes or candidates shall be stated at the meeting, and the Sheriff (*b*) may either forthwith decide thereon, or make avizandum, and he shall, if necessary, make a short note of the objections and of the answers, on which he shall, within four days (*c*) after the meeting, hear parties *viva voce*, and declare the person or persons trustee or trustees in succession whom he shall find to have been duly elected, and state the grounds of his decision in a note, and the same, as well as such short note, shall form part of the process.

(*a*) This means a majority in value (s. 101) of qualified creditors (s. 49, note *b*; also s. 64). SECT. 70.

(*b*) The word "Sheriff" includes "Sheriff-Substitute" (s. 4; *vide* s. 170, note *e*.)

(*c*) *Vide* s. 5 as to computation of time.

When Sheriff not present.

LXX. When the preses has been elected by the creditors, such preses (whether there be any competition or objection or not) shall forthwith report the proceedings to the Sheriff; and the oaths of the several claimants shall, if the Sheriff Clerk or his Depute be present, remain in his possession, or, if he be not present, shall be transmitted to the Sheriff Clerk by the preses, to be retained by him till the trustee shall be finally appointed, when he shall deliver the same to the trustee; and if there be no competition or objection the Sheriff shall declare the person or persons elected trustee or trustees in succession; and if there be competition or objection (*a*) the parties (*b*) shall, within four days (*c*) from the date of the said meeting, lodge in the hands of the Sheriff Clerk short notes of objections (*d*), and the Sheriff shall forthwith hear parties thereon *viva voce*, and give his decision (*e*), and state the grounds thereof in a note, which note, as well as such short notes, shall form part of the process (*f*).

(*a*) A personal objection ought to be stated before the vote, as, if stated *after* the vote, although it be sustained, it merely leads to a new election (*M'Leish*, 23d Feb. 1822; *Corsan*, 24th Nov. 1827; A. B., 10th June 1837). The same result where the personal objection emerges or supervenes after the vote—*i. e.*, effect will be given to it, and a new election ordered (*Patterson*, 26th Jan. 1811; *Wilson*, 14th Dec. 1811; *Corsan*, *supra*); but a subsequent protest is not necessary (*Hunter*, 14th Jan. 1812).

(*b*) 1. The "parties" may be individual creditors as well as candidates. (*Baillie*, 15th Nov. 1845.)

2. Although a candidate may decline to proceed, still the creditors who support him may do so. (*Wiseman*, 5th March 1870.)

(*c*) 1. Sunday is counted as one of the days. (*Foulds*, 22d Dec. 1843, 16 Jur. 177.)

2. The word "Sheriff" includes "Sheriff-Substitute" (s. 4; *vide* s. 170, note *e*.)

(*d*) 1. The objections must be specific, not general. (*Lockhart*, 12th July 1849; *Foulds*, 12th July 1851.)

2. A party who had, by mistake, lodged objections to the vote of John Brown & Co., not entitled in an appeal to object to the vote of Colin Brown & Co. (*M'Cubbin*, 28th June 1850.)

3. Not incumbent on each claimant now to lodge a note of objections, though if he fail to do so he loses his right to be heard against his opponent's votes. (*Miller*, 18th March 1858.)

4. The note of objections need not be signed by a procurator, nor state by

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whom it is drawn; and the Act of Sederunt 1839 applicable to Sheriff Court processes does not apply to notes of objections. (Ibid.)

(*e*) 1. Where two competitors agreed to refer their claims to an arbiter who found them both ineligible, held binding on the parties, in respect that they might have declined to act, and therefore they could bind themselves to act or not to act according to the decision of a third party. (*Hamilton*, 29th May 1828.)

2. Where a claimant withdrew his vote during the competition, in virtue of which a candidate would have been successful, a new election was ordered. (*Lawrie*, 7th June 1848.)

3. The Sheriff ordered a new meeting to elect another trustee where he found the election null. (*Mann*, 1st July 1857.)

4. Where there was corrupt conduct alleged against a candidate in the procuring of votes, a proof was allowed. (*Mann, supra.*)

5. Where both candidates were declared ineligible, the Court of Session, on the petition of a creditor, appointed another meeting to be held for electing a trustee, and so fixed a day as to enable six days' notice to be given in the Gazette, but did not order such notice. (*Struthers*, 7th March 1861.)

(*f*) As to expenses of competitions, *vide* Act 1857, s. 4, *postea.*

Judgment of Sheriff as to trustee final.

LXXI. The judgment of the Sheriff (*a*) declaring the person or persons elected to be trustee or trustees in succession, shall be given with the least possible delay; and such judgment (*b*) shall be final, and in no case subject to review in any Court or in any manner whatever (*c*).

(*a*) The word "Sheriff" means either Depute or Substitute, but not both; hence an appeal from the latter to the former is not competent (s. 170, note *e*).

(*b*) But any interlocutory judgment in the competition, if not declaring election, as also a judgment finding no election appealable. (*Miller*, 18th March 1858.)

(*c*) 1. Apparently the only ground of exception to finality would be the plea of *ultra vires.* (*Vide Buchan*, 13th June 1863.)

2. Held no ground of reduction of Sheriff's deliverance that the minutes had not been written in presence of the meeting, no objection having been stated before the Sheriff. (*Brown*, 2d March 1869; *vide Rankine*, 19th July 1871.)

3. Review excluded, although there had been two sets of minutes reported to the Sheriff. (*Foulis*, 27th Oct. 1871.)

Caution to be found by trustee.

LXXII. The creditors (*a*) shall at the meeting for election of a trustee fix a sum for which the trustee shall find security for his intromissions and performance of the duties and rules hereby enacted, and shall also decide on the sufficiency of the caution offered (*b*); and the person declared to be trustee shall forthwith lodge with the Sheriff Clerk a bond of caution, signed by the trustee and his cautioner (*c*), in the form of the Schedule (C) hereunto annexed, which bond shall be furnished to him by the Sheriff Clerk: Provided, that nothing hereinbefore contained shall be held or construed to prevent the

creditors accepting the bond of a guarantee society in lieu of the bond of caution aforesaid (*d*). SECT. 73.

(*a*) 1. This includes mandatories (s. 63), though mandatories are not specially mentioned, as in s. 68.

2. The sum is fixed by a majority in value (s. 101) of qualified creditors (s. 49, note *b*).

(*b*) 1. The creditors cannot dispense with caution. (A. B., 19th Feb. 1833.)

2. If none offered, the candidate cannot be confirmed. (*Miller*, 17th July 1846; but see *Rankin*, 19th July 1871, where the Sheriff ordered another meeting to supply the omission. But *vide* s. 74, note *j*.)

3. The same if the caution is not approved of. (*M'Farlane*, 29th Jan. 1848.)

(*c*) 1. If no bond of caution is lodged, the candidate cannot be confirmed. (*M'Kersy*, 13th July 1841.)

2. A trustee became bankrupt, after the commissioners had audited his accounts and minuted in the sederunt-book the amount in his hands, which he acknowledged, and upon which he prepared a scheme of division, and advertised payment of the dividend: held that the new trustee could raise summary diligence against the obligants in the bond, and charge for the sum so fixed. (A. B., 29th June 1836.)

3. Held in a case under 33 Geo. III. c. 74, where the bond, like the form under this Act, was conceived in favour of the creditors, that the bankrupt, on becoming reinvested in his estates, was entitled to sue the representatives of the cautioner under the bond for the balance due by the trustee (*Bell*, 17th Dec. 1842). *Note.*—See s. 142, which seems now to put this beyond question.

4. In some old cases the cautioners were freed from liability in consequence of negligence on the part of creditors and commissioners in superintending the trustee (*Duncan*, 13th Dec. 1826; *Mein*, 19th Jan. 1830); and in others, where the negligence was not so great, the cautioner was not freed (*Eadie*, 3d Feb. 1829). But two cases in the House of Lords decided against the principle of freeing the cautioner on such grounds (*M'Taggart's Reps.*, 24th Jan. 1834, and 16th April 1835; *Creighton*, 6th Feb. 1838; and *Robinson*, Ap. Ca. 131). And in the case of *Biggar*, 19th Nov. 1846, the following issue was disallowed: "Whether the commissioners and creditors in the said sequestration, or either of them, wrongfully failed to superintend the conduct of the said Robert Wright, and to call him to account as trustee foresaid, to the loss and injury of the defenders, or of the said George Tod?" But as to the following issue, the Court appointed a more specific statement, as applicable thereto, to be lodged: "Whether the pursuer, pending the sequestration of his estate, and while the said Robert Wright was trustee thereon, wrongfully connived at, or encouraged the malversation of the said trustee, or took benefit thereby?"

(*d*) As some of these societies add conditions and limitations to their bonds not contained in Schedule (C.), the form proposed by the society should, perhaps, be submitted to and approved of by the meeting, otherwise the Court might have a difficulty in receiving such bond.

LXXIII. On the decision of the Sheriff being given, declaring the person elected trustee, and on a bond by the trustee and his cautioner being duly lodged as aforesaid, the Act and warrant in favour of trustee.

SECT. 74. Sheriff shall confirm his election as trustee, which confirmation shall be final, and not subject to review in any Court or in any manner whatever (*a*); and the Sheriff Clerk shall issue an act and warrant in the form of Schedule (D.) hereunto annexed to the trustee, and the trustee shall immediately transmit a copy of such act and warrant to the accountant, who shall make an entry of the name and designation of the trustee in the Register of Sequestrations, and such act and warrant shall be an effectual title to the trustee to perform the duties hereby imposed on him, and shall be evidence of his right and title to the sequestrated estate, for the purposes of this Act; and a copy of such act and warrant in favour of the trustee, purporting to be certified by the Sheriff Clerk, and to be authenticated by one of the Judges of the Court of Session, shall be received in all courts and places within England, Ireland, and her Majesty's other dominions as *prima facie* evidence of the title of the trustee, without proof of the authenticity of the signatures or of the official character of the persons signing, and shall entitle the trustee to recover any property (*b*) belonging or debt due to the bankrupt, and to maintain actions, in the same way as the bankrupt might have done if his estate had not been sequestrated (*c*).

To be a complete title to him.

(*a*) 1. *Vide* s. 71, note *a*. As to finality, *vide* s. 71, note *c*.

2. The word "Sheriff" includes Sheriff-Substitute" (s. 4; *vide* s. 170, note *e*).

(*b*) *Vide* s. 102; *vide* TRUSTEE'S RIGHTS.

(*c*) 1. Where he was found liable in costs *qua* trustee, held no ground of suspension that he had no trust-funds. (*Gibson*, 25th May 1833; *Scott*, 21st Dec. 1826.)

2. Where a trustee sisted himself as pursuer, and attended an examination of havers, on which he became satisfied that the case was bad, and instantly abandoned it, held, in the circumstances, only liable for costs since the date of his appearance. (*Muir*, 14th Feb. 1843.)

3. Where a trustee was sisted in a case, and found liable personally in certain expenses, and *qua* trustee in the remainder, held, in the circumstances, that he was bound to pay the latter expenses preferably out of the funds that he had or ought to have in his hands. (*White*, 2d March 1843.)

4. The trustee takes the risks of an ordinary litigant, and may be subjected in the costs, whether incurred before or after he appeared in the case (*Torbet*, 23d Feb. 1849), and not allowed to sist himself conditionally (*Sandeman*, 4th July 1835; *Ellis*, 26th May 1870).

5. Where a summons had been raised and executed by the bankrupt prior to sequestration, held competent for the trustee to call it in his own name. (*Gallie*, 24th Jan. 1840.)

Removal or resignation of trustee.

LXXIV. A majority in number (*a*) and value of the creditors (*b*) present (*c*) at any meeting duly called for the purpose (*d*), may remove the trustee (*e*), or accept of his resigna-

tion (*f*); and one-fourth of the creditors in value (*g*) may at any time apply by petition to the Lord Ordinary for removal of the trustee, and the Lord Ordinary shall order such petition to be served on the trustee, and intimated in the Gazette (*h*); and if the Lord Ordinary shall be satisfied that sufficient reason has been shown (*i*), he shall remove the trustee, and appoint a meeting of the creditors to be held for devolving the estate on the trustee next in succession, or electing a new trustee; and if the trustee shall die, resign, or be removed, or remain at any one time for three months furth of Scotland (*j*), any commissioner, or any creditor ranked or claiming and entitled to be ranked on the estate, may apply to the Sheriff for an order to hold a meeting for devolving the estate on the trustee next in succession, or electing a new trustee; and the Sheriff shall grant warrant to hold such meeting at a certain time and place, which shall be advertised (*k*) in the Gazette by the commissioner or creditor so applying, and at the time and place so appointed the creditors at such meeting may devolve the estate on the trustee next in succession, or elect a new trustee (*l*); and when the estate is devolved on such trustee the creditors shall fix the amount for which he shall find security (*m*); and on a bond being lodged the Sheriff shall confirm him, and an act and warrant shall be issued and recorded in the same way and to the same effect as in the first election of a trustee (*n*); and in all cases of a new election of a trustee the procedure shall take place in the like manner as is herein-before provided in the case of the first election (*o*); and the succeeding or new trustee shall be vested with the powers and perform the duties and be subject to the same rules as are herein-before provided, and shall call to account the former trustee, or his heirs or representatives (*p*).

SECT. 74.

Election of a new trustee.

(*a*) As to computing a majority in number, *vide* s. 101.

(*b*) Creditors entitled to vote (s. 49, note *b*). It does not mean creditors "ranked" (*Henderson*, 19th July 1849).

(*c*) Whether voting or not (s. 101, and notes *a* and *b*).

(*d*) *Vide* s. 98 and 99.

(*e*) 1. Without assigning any cause (*Wallace*, 27th May 1824; *Muir*, 1st July 1828; *Walker*, 7th Feb. 1835). These decisions pronounced under the same clause in 54 Geo. III. c. 137, s. 71.

2. In removing one who is trustee on both company and individual estates, there should be a separate vote on each estate, otherwise the procedure is null and void. (*Stephen*, 4th June 1863.)

(*f*) 1. It does not appear that he can resign, unless his resignation is accepted as above. (2 B. C. 381.)

2. If the trustee, after resignation, apply for discharge and delivery of bond of caution, the Court of Lanarkshire is in the practice to grant it on evidence

SECT. 75. that he has accounted to his successor in office, and after notice to the accountant. (*Vide* s. 142 and 152.)

(*g*) 1. This means creditors entitled to vote (s. 49 and 14, note *d*). It does not mean creditors ranked (*Henderson*, 19th July 1849).

2. Under 54 Geo. III. c. 137, a single creditor might complain to the Court against the trustee, and the Court could remove him (*Mitchell*, 2d Dec. 1830); but this was under s. 71, which allowed one creditor to call the trustee "to answer for his conduct," which is not permitted by the corresponding clause in this Act, s. 86. The redress competent to any creditor seems to be through the Accountant in Bankruptcy (s. 159).

3. As to a bankrupt's right to apply for removal, *vide* s. 29, note *h*.

(*h*) If creditors withdraw, any other creditors may be sisted. (*Richmond*, 11th Feb. 1854.)

(*i*) 1. Grave misconduct of any kind is a ground of removal. (2 B. C. 382.)

2. A trustee was removed for not making up states and consigning money in terms of the Statute, and defence repelled that the estate so small as not to be able to bear the expense of rigidly observing the Statute, and trustee held entitled to no commission, but not found liable in expenses, in respect of his acting in *bona fide*. (*Aytoun*, 28th May 1824.)

3. A trustee was not removed for slight irregularities—*e.g.*, not lodging sederunt-book in due time, and not making up quarterly states, where no alteration had taken place in the affairs of the estate. (*Ewing*, 8th July 1824, aff. 28th May 1826, 2 W. S. 19.)

4. And where both he and the cautioners were bankrupt. (*Barton*, 10th March 1831.)

(*j*) 1. Where trustee had been discharged, but not the bankrupt, held competent for the Court of Session to appoint a meeting of creditors to elect a new trustee to recover some portions of the estate still outstanding. (*Thomson*, 17th Dec. 1863; *vide Russell*, 15th Jan. 1867; *Gentles*, 22d Nov. 1870.)

2. Held incompetent for Sheriff to do so. (*Hutton*, 13th March 1872.)

(*k*) *Vide* s. 99 as to Gazette notice.

(*l*) Under the same clauses in the former Act (2 & 3 Vict. c. 41, s. 45 and 77) it was held that the creditors were entitled to elect a new trustee, although it was urged that they had no power to do so where the trustee in succession was willing to act, and was not disqualified. (*M'Laggan*, 17th July 1851.)

(*m*) *Vide* s. 72 as to the security for trustee.

(*n*) *Vide* s. 73.

(*o*) *Vide* s. 68.

(*p*) A summary application was held competent (*Swanson*, 5th March 1836). This was under 54 Geo. III. c. 137, s. 71, which says that the "new trustee shall immediately call to account his predecessors in office." And where the trustee admitted a balance, "subject to a deduction of such farther payments as he can instruct," consignation ordered, or interim decree (*Swanson*, 9th July 1836).

Election and Removal of Commissioners.

Election of commissioners.

LXXV. At the meeting for election of a trustee the creditors (*a*) present (*b*) or their mandatories shall, after the election of the trustee, elect three (*c*) commissioners (if there be so

many creditors who have claimed) (*d*), who shall be either creditors or mandatories of creditors, and the like proceedings shall take place in regard to their election as is provided in regard to the election of trustee (except that they shall not be bound to find security) (*e*); and the Sheriff shall decide who are the persons duly elected, and declare their election by a deliverance in the sederunt-book, which decision shall be final (*f*), and shall entitle them to act without further confirmation, and a majority of them shall be a quorum (*g*): Provided that no person shall be eligible as a commissioner who is disqualified to be a trustee (*h*); and any mandatory who has been elected a commissioner shall lose that office, upon written intimation being sent by his constituent to the trustee that he has recalled the mandate, and the trustee shall immediately record the intimation in the sederunt-book; and the trustee shall, in all cases where a commissioner has declined to act, or resigned, or become incapacitated, call a meeting of creditors for the purpose of electing a new commissioner (*i*), and such commissioner shall be elected in manner herein-before provided (*j*). Sect. 76.

(*a*) As to creditors qualified to vote, *vide* s. 49, note *b*, and par. 294, &c.

(*b*) *Vide* s. 101, and notes.

(*c*) Though one of three commissioners decline to accept, the nomination does not fall. (*Caddell*, 8th July 1819, 2 B. C. 386.)

(*d*) If there are less than three creditors claiming on the estate, then so many as do claim will be elected. (2 B. C. 385.)

(*e*) *Vide* s. 68, and subsequent sections.

(*f*) 1. Not necessary, on appealing against the resolution of the creditors, to appeal likewise against the Sheriff's decision (*Gunn*, 12th Dec. 1850. Decided under s. 56 and 127 of 2 & 3 Vict. c. 41, which are similar to s. 75 and 169 of this Act.

2. The word "Sheriff" includes "Sheriff-Substitute" (s. 4; *vide* s. 170, note *e*).

(*g*) If only two elected or acting, they must concur. (2 B. C. 385.)

(*h*) *Vide* s. 68.

(*i*) *Vide* s. 98 and 99.

(*j*) Held that commissioners are entitled to no gratuity. (*Forrester's Creditors*, 2d June 1798, D. 1252.)

LXXVI. A majority (*a*) of the creditors (*b*) assembled (*c*) at any meeting duly called for that purpose (*d*) may remove a commissioner (*e*), and may elect another in his place, in manner before directed. Removal of commissioners.

(*a*) *Vide* s. 101.

(*b*) Creditors qualified (s. 49, and par. 294, &c).

SECT. 77.

(*c*) *Vide* s. 101, and notes.

(*d*) *Vide* s. 98 and 99.

(*e*) It is questionable if a single creditor can apply for removal of a commissioner. Under 54 Geo. III. c. 137, s. 71, such an application was competent (*Sanders*, 8th Feb. 1823; *Parlane*, 28th June 1825); but it was only so held because the Commissioners were declared amenable to the Court, at the instance of any party interested, "to answer for their conduct." That clause is not in the present Act. It would seem that a commissioner may only be removed by a majority of the creditors, in terms of s. 76, or through the accountant (s. 159).

Protection and Allowance to Bankrupt.

Protection to bankrupt.

LXXVII. At the meeting for the election of a trustee, or at the meeting held after the examination of the bankrupt, or at any meeting called for the purpose (*a*), the majority in number (*b*) and value of the creditors (*c*) present (*d*) may resolve that the personal protection of the bankrupt ought to be renewed for such time (*e*) as they may think fit, and in such case the trustee (*f*) shall (*g*) apply (*h*) to the Sheriff, who shall (*i*) renew the protection (*j*), and the deliverance by him renewing the same, or an extract thereof signed by the Sheriff Clerk, shall have the same effect as the original warrant of protection.

(*a*) *Vide* s. 98 and 99, as to calling meetings.

(*b*) As to computing a majority in number, *vide* s. 101.

(*c*) Qualified creditor (s. 49, and par. 294, &c.)

(*d*) Whether voting or not. (*Vide* s. 101, and notes.)

(*e*) 1. Where protection voted till "the meeting to be held after the examination of the bankrupt" (s. 96), held to mean the first meeting after the examination was concluded. (*M'Kellar*, 12th July 1861.)

2. But where the protection was voted "until the period of the second general meeting of creditors," and the Sheriff's warrant granted protection "until the said second general meeting of creditors after his examination," and the examination was not concluded at the second statutory meeting, held that the warrant must be construed by the resolution, and accordingly that the protection had expired when the second statutory meeting took place. (*Walker*, 7th Dec. 1861.)

(*f*) 1. In *Douglas*, 17th Dec. 1842, the petition was at the instance of the bankrupt, with consent of trustee and a majority of creditors.

2. Where Sheriff has granted protection on trustee's petition, and Lord Ordinary recalled it, the bankrupt has right to reclaim. (*Murray*, 15th Nov. 1856; *Millar*, 27th Nov. 1862, Jur.)

3. Held to be compliance with the Act that the trustee was ordained under a petition, at the instance of the bankrupt and two commissioners, to apply for renewal, and that he reported to the Sheriff a petition, at the same instance, for renewal, which was granted. (*Inglis*, 13th July 1859.)

(*g*) Where renewal of protection was voted unanimously by the creditors at a meeting, but the trustee failed to apply for the Sheriff's warrant, held,

nevertheless, that the protection was valid in a question with a creditor who concurred in the vote. (*M'Kellar, supra.*) SECT. 78.

(*h*) A report by the trustee is all that seems necessary. (*Millar, supra.*)

(*i*) 1. Under the same section in the last Act (2 & 3 Vict. c. 41, s. 58), it was held, that if there be a statutory majority, and the application is duly made, it is imperative on the Sheriff to renew the protection. (*Hodge*, 4th Dec. 1855; *vide Millar, supra.*)

2. The word "Sheriff" includes "Sheriff-Substitute" (s. 4; *vide* s. 170, note *e*).

(*j*) 1. An appeal against the resolution to grant renewal of protection, if there be opposition, at one time seemed necessary. In *Douglas*, 17th Dec. 1842, where there were opposing votes and protests, the Sheriff superseded consideration of the petition till the appeal days were expired. In *Murray*, 15th Nov. 1856, both appeal and petition were raised and conjoined. But it is now decided that no appeal is necessary, and that creditors may oppose the petition without any appeal. (*Millar, supra; vide Hall*, 24th Nov. 1866.)

2. The Sheriff's interlocutor on the petition is appealable under s. 170. (*Cookson*, 11th Dec. 1863.)

Allowance to bankrupt.

LXXVIII. At the meeting for election of a trustee, or at the meeting held after the examination of the bankrupt, or at any meeting called for the purpose (*a*), four-fifths in value of the creditors (*b*) present (*c*) may authorise payment from time to time to the bankrupt, or to the partners of a company (if the sequestration be of a company estate), of such sum out of the estate as they shall think proper for sustenance, until the period assigned for payment of the second dividend (*d*), but such allowance shall not exceed £3, 3s. per week to the bankrupt, or to each individual partner of a company, from the date of sequestration to the period aforesaid, and no allowance shall be given if the bankrupt shall not have complied with the provisions of this Act: Provided always, that if it shall at any time be the opinion of a majority (*e*) of the creditors present at a regular meeting that it is for the interest of the estate that a special allowance should be further made to the bankrupt, and if the Accountant in Bankruptcy shall report in its favour, it shall be competent for the Lord Ordinary or the Court, on application by the trustee, with the said concurrence of creditors, and report by the accountant, to award such allowance, which shall then be payable out of the estate.

(*a*) As to calling meetings, *vide* s. 98 and 99.

(*b*) Qualified creditors (s. 49, and par. 294, &c.)

(*c*) Whether voting or not (s. 101, and notes).

(*d*) The period assigned for payment of the second dividend is ten months after the awarding of the sequestration (s. 131).

(*e*) A majority in value (s. 101).

Duties of Trustee and Commissioners.

SECT. 79, 80, 81.

Record of abbreviate of his confirmation.

LXXIX. The trustee, within twenty-one days (*a*) after his election is confirmed, shall present an abbreviate, signed by him or his agent (*b*), in the form of Schedule (E. No. 1) hereunto annexed, to the Keeper of the Register of Abbreviates of Adjudications, who shall forthwith record the same, and write and subscribe a certificate on the said abbreviate in the form specified in the said Schedule (E. No. 2.); and the like proceeding shall take place within twenty-one days after the election of each new trustee shall be confirmed.

(*a*) 1. Where the abbreviate was not lodged in due time, the Court granted warrant to the keeper to receive and record it: held that this did not invalidate the trustee's right to sell the heritage, nor warrant a purchaser in refusing payment of the price. (*Munro*, 21st June 1851.)

2. The Court again granted warrant for recording the abbreviate, which had been neglected, reserving all objections to its validity at the instance of any party interested, but directed that the expenses should not come against the estate. (A. B., 21st Dec. 1855.)

3. Where the twenty-one days had elapsed, the Court granted warrant to record the abbreviate, under reservation of all objections. (*Martin*, 18th Nov. 1857.)

(*b*) 1. The trustee has the appointment of the law agent. (*Baillie*, 13th June 1822.)

2. The agent is not an officer in the sequestration, and is not liable for the trustee's neglect of duty. (*Gourlay*, 15th June 1827.)

3. A summary petition by a trustee to compel agent to account for intromissions, &c., is not competent (*Berry*, 12th Feb. 1830). But where an agent carried through a poinding and sale, a summary petition for payment of the proceeds, under deduction of any counter-account due to the agent, was held competent (*Graham*, 20th Feb. 1850). A summary petition for delivery of titles is competent (*Paul*, 2d Feb. 1826).

4. The trustee acting as law agent cannot exact fees. It is even questionable if a commissioner can. (*Vide* s. 85, note *c*.)

Trustee to take possession of estate and books, and make up inventory.

LXXX. The trustee shall, as soon as may be after his appointment, take possession of the bankrupt's estate and effects, and of his title-deeds, books, bills, vouchers, and other papers and documents, and also make up an inventory of such estate and effects, and a valuation showing the estimated value and the annual revenue thereof, and shall forthwith transmit copies of such inventory and valuation to the accountant.

Bankrupt to make up state of his affairs;

LXXXI. The bankrupt shall make up, and, at the meeting appointed for the election of a trustee, deliver to the clerk of such meeting, a state of his affairs (*a*), specifying his whole property, wherever situated, the property in expectancy or to which he may have an eventual right, the names and designations of his creditors and debtors, and the debts due by and to him (*b*), and a rental of his heritable property, which state

and rental shall be subscribed by the bankrupt, and shall then be delivered to the trustee, and the same shall be engrossed in a sederunt-book to be kept by the trustee; and the bankrupt shall at all times give every information and assistance necessary to enable the trustee to execute his duty; and if the bankrupt fail to do so, or to grant any deed which may be requisite for the recovery or disposal of his estate, the trustee may apply to the Sheriff to compel him to give such information and assistance, and to grant such deeds (*c*), under the penalty of imprisonment and of forfeiture of the benefit of this Act, and unless cause be shown to the contrary the Sheriff shall issue a warrant of imprisonment accordingly (*d*). SECT. 82. and to give information and grant deeds.

(*a*) If the bankrupt fail to do so, it is the duty of the trustee to compel him. (*Scobie*, 23d Nov. 1869.)

(*b*) 1. Under this clause in 54 Geo. III. c. 137, s. 25, held that an omission to include a debt in his state of affairs which was duly sworn to, did not bar the bankrupt's right to sue for it on his reinvestiture. (*Baillie*, 14th Feb. 1835.)

2. The same held under 2 & 3 Vict. c. 41, s. 52, which on this point is the same as the above (*York*, 5th July 1861). The omission, however, with other circumstances, was considered so suspicious as to admit of proof *prout de jure* to cut down a bill.

(*c*) In all proceedings against the bankrupt, the trustee must follow the course prescribed by the Statute. In one case, an action at his instance against the bankrupt for count and reckoning and payment was dismissed, as it was not authorised by the Statute. (*Aitken*, 6th June 1809, F. C.)

(*d*) The bankrupt, in the event of being so imprisoned, would not be entitled to aliment. (E. 4. 3. 28.)

LXXXII. The trustee (*a*) shall manage, realise, and recover the estate belonging to the bankrupt, wherever situated, and convert the same into money (*b*), according to the directions (*c*) given by the creditors (*d*) at any meeting (*e*), and if no such directions are given, he shall do so with the advice of the commissioners (*f*); and he shall lodge all money which he shall receive in such bank (*g*) as the majority of the creditors in number and value at any general meeting shall appoint (*h*), and failing such appointment, in any joint-stock bank of issue in Scotland (provided that the bank be not one in which the trustee shall be an acting partner, manager, or cashier); and the money shall be lodged in the name of the trustee, in his official character under this Act (*i*), at the highest rate of interest which can be procured for the same; and such bank shall, once yearly at least, balance such account, and accumulate the interest with the principal sum, so that both shall thereafter bear interest as principal; and if such Trustee to recover funds.

SECT. 82. bank fail to do so, such bank shall be liable to account as if such interest had been so accumulated.

(*a*) It was held incompetent for a majority of creditors to send the bankrupt abroad to recover debts. (*Turner*, 8th June 1822.)

(*b*) 1. *Sale of Heritable Estate.*—This section must be read along with s. 96, 105, 113, 114, 115, 136. In selling the heritable estate, there are three modes pointed out by these sections—viz., judicial sale, sale by auction, and private sale. The conditions under which these different modes of sale are to be carried out are specifically set down, and cannot be deviated from without rendering the sales a nullity. (1.) Judicial sale may become advisable when there are conflicting securities or a complicated mode of ranking, or when a clear title is wished. (2.) A public voluntary sale may be brought about by the trustee, but if there be a preferable heritable creditor in the field, he cannot (s. 114) sell at a lower upset price than will cover the creditor's debt, principal, interest, and expenses. The trustee cannot prohibit a heritable creditor, with power of sale, from selling, unless he himself begin first, or there is undue delay in the creditor's proceedings (s. 114). (3.) A private sale is also competent to the trustee, with consent of the heritable creditor, if any, and the accountant and a majority in number and value of the creditors. There is no express prohibition against a private sale by the trustee alone; but it is obvious that where a Statute confers a power on a public functionary, and a mode for exercising that power, it is incumbent on him to follow that mode in preference to any other (*vide Crichton, infra*).

2. *Sale of Moveable Estate.*—It is more doubtful if a private sale of the moveable estate is incompetent. There is no express enactment pointing out a mode of selling the moveables privately, as in the case of heritage, and consequently the argument against that mode of selling moveables is not so strong. But there is s. 136, which points out sale by *auction* as the mode of selling the heritable and moveable estate, and outstanding debts which are still undisposed of on the lapse of twelve months from the date of the sequestration; and from this section it may perhaps be inferred that the general mode of sale contemplated by the Legislature was sale by auction. Besides, public sale is the only mode of sale sanctioned by courts of law, and if it was meant to give the trustee and commissioners, or creditors, such a power as that of private sale, it ought to have been expressly given. The late Statutes were likewise silent on the subject, but, nevertheless, it is sometimes the case that trustees adopt the private mode of selling the moveable assets. A distinction may here be drawn between stock-in-trade and debts. Where a body of creditors resolve on a private sale of the stock, that resolution becomes final, if not appealed against; and, according to the principle laid down in the analogous case of *Bailie*, 15th Nov. 1845, it would likely not be considered such an excess of power on the part of the creditors as to render the sale reducible. But where such a sale is of debts, the assignee's title will not be sustained in a court of law. In *Crichton*, 25th June 1833, the trustee and commissioners, with the subsequent sanction of the creditors, sold privately a debt due to the estate. The assignee raised an action for payment, and he was met with the objection, that a private sale was not authorised by the Act 54 Geo. III. c. 137, s. 56. He answered that there was no prohibition in the Act against a private sale of debts, although it gave the creditors power, on the lapse of two years, to sell, *inter alia*, the debts by auction. The assignee's title was held bad, as the sale was illegal. This doctrine has now been con-

firmed by *Robertson*, 20th Feb. 1857, where the sale of a debt was carried through privately by the trustee with consent of the commissioners. This case occurred under 2 & 3 Vict. c. 41, but that Statute is on this point substantially the same as the present Act (*vide Noble*, 4th Nov. 1876). In *Low*, 20th Dec. 1836, a trustee tried to get the Court to sanction a sale by private bargain of stock, &c., but the Court would not interfere—leaving the trustee to act on his own responsibility.

3. *Abandonment and Compromise of Claims.*—As creditors may either prosecute, compound (s. 176), or abandon a claim, so, if they resolve to abandon a claim, neither the trustee, nor any creditor in his name, can prosecute for payment as long as the resolution stands unrecalled (*Gray*, 6th Feb. 1850). It is of course competent to appeal against the resolution (s. 169), and as the appeal will bring up the merits of the resolution (*Somerville*, 10th Feb. 1859), the Court might, on the principle of certain old cases (*Gray*, 29th June 1821; *Garden*, 3d July 1823; *Sprott*, 5th July 1828), allow a minority of creditors, or a single creditor, on guaranteeing the estate and trustee against risk, to prosecute an abandoned claim in the name of the trustee; and perhaps, also, on the principle of *Spence*, 13th Dec. 1832, allow a minority, on payment of a sum which the majority had resolved to accept as a compromise of a claim, to have an assignation of the claim, and prosecute it, giving security to the estate and the trustee against loss, and agreeing to render up any surplus after getting payment of their debts. The bankrupt may also take up abandoned rights (*vide* s. 29, note *f*); but in *M'Kay*, 31st Jan. 1866, it was held that the creditors could not abandon an estate in the face of an offer by a creditor to purchase it.

(*c*) *Vide* s. 96 as to directions by creditors to trustees.

(*d*) This means a majority in value (s. 101) of qualified creditors (s. 49, note *b*, and par. 294, &c.)

(*e*) Whether called for the purpose or not (s. 99; *vide* also s. 96).

(*f*) *Vide* interpretation clause (s. 4), as to majority of commissioners acting.

(*g*) A resolution of creditors to lodge the money in the hands of individuals who were not bankers, held illegal. (*Playfair*, 24th Dec. 1788, D. 1251.)

(*h*) *Vide* s. 83, as to penalty for keeping up funds.

(*i*) If the trustee lodges the money in his official character, he is not liable for failure of the bank, but if he lodges it in his private account, then he is liable. If, again, the trustee fails, then the money lodged in his name *qua* trustee belongs to the estate; but if in his private capacity, it belongs to his own creditors. (2 B. C. 378.)

Penalty on trustee retaining funds.

LXXXIII. If the trustee shall keep in his hands any sum exceeding fifty pounds (*a*) belonging to the estate for more than ten days (*b*), he shall pay interest to the creditors at the rate of twenty pounds per centum per annum on the excess of such sum above fifty pounds for such time as the same shall be in his hands beyond ten days (*c*); and unless the money has been so kept from innocent causes, the trustee shall (*d*) be dismissed from his office, upon petition to the Lord Ordinary

SECT. 84. or Sheriff by any creditor (*c*), and have no claim to remuneration, and shall be liable in expenses.

(*a*) 1. Held not liable in penal interest where he applied the funds of a partner's estate towards the expenses of managing the company's estate, the creditors on both estates being the same. (*Ferrier*, 8th July 1835.)

2. In ascertaining the sum in the trustee's hands, held that if he makes erroneous payments *in mala fide*, he shall be debited with interest as if they had not been made, but otherwise if made *bona fide*. (*Maben*, 3d June 1837.)

(*b*) It is no excuse for retaining money in hand for more than ten days, that it has been drawn to pay dividends due, but not called for. (*Accountant in Bankruptcy*, 29th June 1864.)

(*c*) Under this clause in 54 Geo. III. c. 137, s. 43, held that in the event of a trustee's removal from office, he is liable in penal interest up to that period, but in simple interest after that period on the accumulated sum. (*Johnston*, 18th Feb. 1826.)

(*d*) Dismissal is imperative (*Accountant in Bankruptcy*, 17th Dec. 1867). But in the process for dismissal it is reserved to the creditors to recover, by another process, the penal interest (*Accountant in Bankruptcy, ut supra*).

(*e*) A qualified creditor (s. 49, note *b*).

Trustee to keep a sederunt-book, and send copy of accounts to accountant.

LXXXIV. The trustee (*a*) shall keep a sederunt-book (*b*), in which he shall record all minutes of creditors and of commissioners, states of accounts, reports, and all the proceedings necessary to give a correct view of the management of the estate, and he shall also keep regular accounts of the affairs of the estate, and transmit to the Accountant in Bankruptcy, before each of the periods herein assigned for payment of a dividend (*c*), a copy, certified by himself, of such accounts, in so far as not previously transmitted, and such copies shall be preserved in the office of the accountant; and the sederunt-book and accounts shall be patent to the commissioners and to the creditors or their agents, at all times: Provided always, that when any document is of a confidential nature (such as the opinion of counsel on any matter affecting the interest of the creditors on the estate) the trustee shall not be bound to insert it in the sederunt-book, or to exhibit it to any other person than the commissioners.

(*a*) In an action by the law agent against the trustee for his account, and where the trustee declined to pay unless the agent gave up the sederunt-book, which he denied having in his hands, held, under this clause, in 2 & 3 Vict. c. 41, s. 63, that the presumption, even in a question with the law agent, is that the sederunt-book is in the trustee's hands. (*Wotherspoon*, 17th Nov. 1843.)

(*b*) 1. The Court refused permission to make up a new sederunt-book when the old one was lost. (*Christie*, 25th Jan. 1827.)

2. The sederunt-book is no evidence in favour of the trustee (*Mansfield*, 15th March 1835), although it may be used against him. SECT. 85, 86.

(*c*) *Vide* s. 129, 131, 132.

LXXXV. The commissioners shall superintend the proceedings of the trustee, concur with him in submissions and transactions (*a*), give their advice and assistance relative to the management of the estate, decide as to paying or postponing payment of a dividend, and may assemble at any time (*b*) to ascertain the situation of the bankrupt estate, and any one of them may make such report as he may think proper to a general meeting of the creditors (*c*). Duties of commissioners.

(*a*) *Vide* s. 176.

(*b*) There is no statutory provision as to meetings of commissioners, whether as to time, mode, or purpose of calling such meetings.

(*c*) 1. Question whether a commissioner can act as law-agent for the trustee, and claim his account against the estate, but held that it is not competent for the bankrupt to take that objection against the agent's costs of a litigation with the estate in which the bankrupt was unsuccessful. (*Learmonth*, 13th Feb. 1858.)

2. Incompetent for the commissioners to appoint a committee to assist the trustee. (*Thomson*, 2d July 1859.)

3. The commissioners are liable to account for intromissions and management. (*Vide* next section.)

LXXXVI. The judicial factor, the trustee, and commissioners shall be amenable to the Lord Ordinary and to the Sheriff (*a*), although resident beyond the territory of the Sheriff (*b*), at the instance of any party interested (*c*), to account (*d*) for their intromissions and management (*e*), by petition served on them; and in case it shall appear that such application ought not to have been made, the party complained of shall be entitled to his full expenses, to be either retained out of the funds, or recovered from the party complaining, as the Lord Ordinary or the Sheriff shall direct. Judicial factor, trustee, and commissioners amenable to Lord Ordinary and Sheriff.

(*a*) Or Sheriff-Substitute (s. 4; *vide* s. 170, note *e*).

(*b*) Citation beyond the county of the Sheriff must be made on indorsation by Sheriff-Clerk under the Act 1 & 2 Vict. c. 119, s. 24.

(*c*) A creditor is entitled to proceed. (*Bell*, 28th Nov. 1862.)

(*d*) 1. But only for an accounting, not for punishment (*Bell*, *supra*). In this case the trustee found entitled to expenses for personal attendance. *Vide* s. 159 as to mode of procedure for penalties.

2. A complaint by a bankrupt against a trustee and commissioners that the trustee's commission was fixed at an extravagant rate, and praying that the minute fixing the commission be recalled, held competent under this section. (*Burt*, 3d Feb. 1863.)

(*e*) Where, after the lapse of twenty years, a trustee was called to account

SECT. 87. by a creditor in respect he had not raised a reduction of certain preferences, and had improperly admitted certain claims, and had also retained large sums in his hands, held not relevant on account of the delay, except as to the retention of sums above fifty pounds in his hands, as to which he was found liable in that creditor's share of the penal interest thereon. (*M'Lachlan*, 23d Nov. 1830.)

Examination of Bankrupt.

Sheriff to name a day for bankrupt's examination.

LXXXVII. The trustee shall, within eight days (*a*) after the date of the act and warrant confirming him, apply to the Sheriff to name a day for the public examination of the bankrupt, and the Sheriff (*b*) shall issue his warrant for the bankrupt to attend for such examination within the Sheriff Court House on a specified day and at a specified hour, being not sooner than seven days nor later than fourteen days from the date of the Sheriff's warrant; and on the Sheriff granting such warrant (*c*) the trustee shall publish an advertisement, in terms of Schedule (F.) hereunto annexed, in the Gazette (*d*), and send by post or otherwise special notice to every creditor who has lodged a claim, or who may be named in the bankrupt's state of affairs (*e*), intimating his name and designation, his election as trustee, the day, hour, and place fixed for the examination of the bankrupt, and also a specified day, being not sooner than seven days nor later than fourteen days after the day appointed for the examination of the bankrupt (*f*), and in the sequestration of the estates of a deceased debtor a meeting of creditors shall be called by the trustee by public advertisement and notice to each creditor (*g*), to be held not later than fourteen days after the date of such advertisement, and also the hour and place for holding a second meeting of the creditors, and shall also in the same notice intimate the period within which claims should be lodged (*h*).

(*a*) As to computation of time, *vide* s. 5.

(*b*) Or Sheriff-Substitute (s. 4; *vide* s. 170, note *e*).

(*c*) The Act does not specify how long before the examination the notice in the Gazette must be given. It must certainly be *before* it.

(*d*) 'Edinburgh Gazette' (s. 4).

(*e*) It is no excuse for the trustee not sending notice to all the creditors that the bankrupt has failed to give in a state of affairs under s. 81. (*Vide Scobie*, 23d Nov. 1869.)

(*f*) The meaning of this part of the section is far from being clear. Certainly it would have been better if the section of the late Act, s. 65, had been adopted, for, by the aid of a parenthesis to provide for the case of its being the sequestration of a deceased debtor, the reading of that section was quite intelligible. By introducing a similar parenthesis into the above section, the meaning would be improved: "And on the Sheriff granting such warrant the trustee shall publish an advertisement, in terms of Schedule (F.) hereunto

annexed, in the Gazette, and send by post or otherwise special notice to every creditor who has lodged a claim, or who may be named in the bankrupt's state of affairs, intimating his name and designation, his election as trustee, the day, hour, and place fixed for the examination of the bankrupt, and also a specified day, being not sooner than seven days nor later than fourteen days after the day appointed for the examination of the bankrupt (and in the sequestration of the estates of a deceased debtor a meeting of creditors shall be called by the trustee by public advertisement and notice to each creditor, to be held not later than fourteen days after the date of such advertisement), and also the hour and place for holding a second meeting of the creditors, and shall also in the same notice intimate the period within which claims should be lodged." SECT. 88.

(*g*) This is obviously an abbreviation of the preceding clause, "every creditor who has lodged a claim, or who may be named in the bankrupt's state of affairs."

(*h*) 1. *Vide* s. 123 and 129.

2. In the event of an offer of composition being entertained at the meeting for election of trustee, the above section to be read along with s. 137.

Sheriff may grant warrant to bring bankrupt for examination.

LXXXVIII. It shall be competent for the Sheriff (*a*) to grant a warrant to apprehend the bankrupt, and bring him before the Sheriff for examination; and if the bankrupt be imprisoned for a debt or other civil obligation within Scotland, the Sheriff may grant warrant to magistrates and jailers, on receiving a duplicate of such warrant, and an acknowledgment for the person of the bankrupt, to deliver him to the officer presenting the same, and they shall do so accordingly; and the Sheriff may also grant warrant to bring the bankrupt from the Sanctuary, which warrant shall protect him against arrest for debt or other civil obligation while under examination, and on the way to and from the place of examination, and shall be sufficient authority, either within or beyond the territory of the Sheriff in Scotland, to messengers-at-arms, and to the officers of the Sheriff, to apprehend, transmit, detain, and imprison, and to jailers to deliver up, receive, and detain, the bankrupt, until his examination is concluded, and also for his retransmission after examination to the jail from which he was delivered up, and reimprisonment therein; and if the bankrupt cannot be brought from jail or the Sanctuary, or cannot be examined by the Sheriff there, or is by a lawful cause prevented from attending at the time and place appointed, or is in custody on a criminal charge, or is abroad, the Sheriff may grant commission to take the examination; and the Sheriff or commissioner may, if he see cause, adjourn the examination of the bankrupt to an early day (*b*), to be then fixed (*c*), and the Sheriff may, on the application of the trustee, order the bankrupt to be examined as often as he shall see fit (*d*).

SECT. 89, 90.

(*a*) Or Sheriff-Substitute (s. 4; *vide* s. 170, note *e*).

(*b*) Adjournment refused where over two months were asked. (*Wright*, 8th Dec. 1878.)

(*c*) Held not competent to adjourn the bankrupt's examination indefinitely, and meantime to grant commission to examine witnesses abroad in reference to the various matters contained in the bankrupt's previous examination. (*Unger*, 16th July 1867.)

(*d*) 1. The grounds of a petition for re-examination of the bankrupt must be stated. (*Sommerville*, 10th Feb. 1859.)

2. It may take place after the first examination is closed and oath administered. (*Sommerville*, 10th Feb. 1859.)

3. The trustee and commissioners are the judges of the propriety of applying for re-examination of the bankrupt, subject to the control of the creditors. (Ibid.)

4. Any creditor making a motion at a meeting for re-examination, which is negatived, may bring the resolution under the review of the Court on its merits. (Ibid.)

Apprehension and transmission of the bankrupt when out of Scotland.

LXXXIX. If the bankrupt be in any part of Great Britain and Ireland other than Scotland, the Lord Ordinary may, on petition by the trustee, grant warrant to all judges, magistrates, justices of the peace, and officers of the law, to apprehend and transmit him to the place of his examination, and to enforce the same, which they are hereby required to do; and if the bankrupt be in prison or custody, the Lord Ordinary may grant warrant as aforesaid to magistrates and jailers, upon receiving a duplicate of such warrant, and an acknowledgment for the person of the bankrupt, to deliver him to the messenger or officer presenting such warrant, which they shall do accordingly; and such warrant shall be sufficient authority for the apprehension, transmission, detention, and imprisonment of the bankrupt (when necessary for his safe custody), and for his retransmission after examination to and reimprisonment in the prison or custody from which he was delivered up.

Examination of bankrupt's wife and others.

XC. The Sheriff (*a*) may, at any time (*b*), on the application of the trustee (*c*), order an examination of the bankrupt's wife and family, clerks, servants, factors, law agents (*d*), and others (*e*), who can give information relative to his estate (*f*), on oath (*g*), and issue his warrant requiring such persons to appear (*h*), and if they refuse or neglect to appear, when duly summoned, the Sheriff may issue another warrant to apprehend the person so failing to appear: Provided that when such person is not the bankrupt, nor his wife, nor one of his family, nor his clerk or servant, no warrant for apprehension shall be issued until the expiration of eight days from the service of the first warrant, unless the trustee shall, on oath, specify a reasonable cause of belief that such person intends to leave the country to avoid the examination, in which case the Sheriff may forthwith issue such warrant; which several warrants shall be

sufficient to authorise messengers-at-arms, or the officers of the Sheriff, to execute the same, either within or without the territory of the Sheriff in Scotland, as aforesaid; and if any person liable to be examined cannot attend, the Sheriff may grant commission to take his examination (*i*); and such examination, whether by the Sheriff or by a commissioner, may be adjourned, if it shall seem fit, to an early day, to be then fixed: Provided that persons, other than the bankrupt, summoned to attend for examination shall be entitled to such allowances as witnesses are in other cases entitled to, and the amount of which, if disputed, shall be fixed by the Sheriff. SECT. 90.

N.B.—*The above section is so far similar to the late Act as to render the following cases quite applicable.*

(*a*) Or Sheriff-Substitute (s. 4; *vide* s. 170, note *e*).

(*b*) A factor of the bankrupt was re-examined even after the lapse of two or three years from his first examination, and although it was not averred that any new discoveries had since been made to call for re-examination. (*Clark*, 8th July 1848.)

(*c*) As to control over trustee in the exercise of his discretionary power to have parties examined, *vide* s. 88, note *c*.

(*d*) The agent held liable to examination although he had entered into a transaction with the bankrupt and was to be examined regarding it (A. B., 4th June 1858). As to confidential communications, *vide* s. 91, note *b*.

(*e*) The names of the parties to be examined should be set forth. (*Unger*, 16th July 1867.)

(*f*) 1. A creditor cannot be examined as to his claim (*Ridpath*, 20th July 1844). *Vide* s. 126 as to trustee's power to examine him when adjudicating on claims for a dividend.

2. But the bankrupt's brother, who supplied the bankrupt with goods and had the pass-book containing a record of their dealings, ordered to produce same and to be examined anent it—notwithstanding that it might throw light upon his own claim on the estate. (*Pollock*, 3d Dec. 1844.)

3. Though one petition is pending for the examination of third parties, it is not incompetent for the trustee to present another against the same parties. (*Kerr*, 16th Dec. 1847.)

4. And on the principle that a claimant cannot be so examined, the law agent of the claimant cannot be examined. (*Paul*, 21st Feb. 1855.)

5. Nor the manager of a company as to the company's affairs, though the bankrupt was a shareholder. (*Ridpath, supra.*)

6. In one case it was held that the trustee, in examining third parties, was bound to state circumstances inferring that they can give information relative to the estate. (*Ridpath, supra.*)

7. But it has since been held enough if the trustee states that he has reason to believe that the party can give such information, without condescending on any circumstances inferring knowledge. (*Burnet*, 14th June 1855.)

8. Not necessary to condescend particularly on the information he expects to obtain. (*Park*, 21st Oct. 1871.)

(*g*) *Vide* s. 21, note *g*.

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(*h*) The Sheriff ordered the examination of parties in London, and obtained the aid of the London Bankruptcy Court to carry out the order. (*Park*, 21st Oct. 1871. *Vide English Banks Act*, 1869, s. 73, 74, and 75, *postea*.)

(*i*) Where a commission is granted in the Sheriff Court, "the commissioner, if the proof is to be taken within Scotland, shall either be the clerk of court, his acting depute, a practitioner before any court of law of at least three years' standing, a justice of the peace, or other magistrate." (*Act of Sederunt*, 1839.)

Bankrupt and others must answer lawful questions, and produce documents.

XCI. The bankrupt and such other persons shall (*a*) answer all lawful (*b*) questions relating to the affairs of the bankrupt (*c*), and the Sheriff may order such persons to produce for inspection any books of account, papers, deeds, writings, or other documents in their custody relative to the bankrupt's affairs, and cause the same, or copies thereof, to be delivered to the trustee (*d*).

(*a*) *Vide* s. 93 as to penalty for refusal.

(*b*) 1. Examinations under the Statute are not cases of evidence, but mere inquiries or investigations, and therefore are not subject to the strict rules of evidence. (*Sawers*, 17th Dec. 1858, 2 B. C. 393 and 399.)

2. Consequently even hearsay information would seem admissible within reasonable limits (ibid.); and a bankrupt cannot plead that the information wanted is contained in a written document. (*M'Kay*, 24th Feb. 1863.)

3. The deposition of a party may of course be used in evidence against himself. (*Belch*, 10th June 1806, 2 B. C. 400.)

4. But not against any other (*Sawers, supra;* 2 B. C. 482), unless in the meantime the party deponing should die (2 B. C. 482).

5. So a deposition by one partner held not evidence against another. (*Smith*, 2d Oct. 1820, Mur.; 2 B. C. 399.)

6. Nor the deposition of a principal against a cautioner. (*Hunter*, 20th Dec. 1822, Mur.)

7. Confidential communications as to the estate between the bankrupt and his wife are not protected. (*Sawers, supra.*)

8. Nor between him and his law agent on the same subject. (*M'Kersy*, 1st March 1823; *Sawers, supra.*) But bankrupt's present law agent not bound to answer the question, "Do you know where the bankrupt is now?" as it is not in relation to his affairs. (*Tod's Trustee*, 17th July 1872.)

9. The party is not bound to give answers that will criminate himself (*Sawers, supra;* Evidence Act, 16 Vict. c. 20, s. 3; 2 B. C. 395 and 396), or expose him to any penalty or forfeiture; but he is bound to do so although they may expose him to a civil suit or tend to establish a debt against him (44 Geo. III. c. 37; 2 B. C. 398).

10. One partner cannot object to the examination of his copartner, on the ground that it will criminate him (the objector). (*Vide Wright*, 8th Dec. 1878.)

11. A wife held bound to answer questions although her answers might lead ultimately to a criminal proceeding against her husband, and even although a criminal charge had been already made against him anent the very matters upon which she was to be examined (*Sawers, supra*); but, of course, as above laid down, her deposition could not be used as evidence against him (ibid.)

(*c*) Held that the proper object of the examination of the bankrupt is to ascertain what his estate consists of, where it is, and what he has done with

it, or to affect it; and accordingly, questions by one creditor as to another creditor's claim not allowed. (*Delvoitte*, 16th Nov. 1877.) SECT. 92, 93.

(*d*) The trustee is not entitled to retain documents produced by third parties on the ground that they belong to the bankrupt. (*Trousdale*, 6th June 1867.)

Mode of examination.

XCII. The examination of the bankrupt, and of such other persons, shall be taken upon oath (*a*), and shall, except in the cases already specified, wherein a commission is allowed to be granted, take place before the Sheriff (*b*), and the bankrupt's examination shall be taken and may be written or dictated by the Sheriff (*c*), and authenticated in the ordinary way as a regular deposition (*d*); but notes of the evidence of such other persons shall be written by the Sheriff in the mode prescribed by the Act passed in the 16th and 17th year of the reign of her present Majesty, chapter 80, with regard to proofs in civil cases in the Sheriff Courts (*e*), except where it shall appear to him necessary to record and authenticate such evidence, in whole or in part, in the form of a regular deposition, and if the trustee shall make an application to that effect the bankrupt and such other persons shall be examined in open court (*f*).

(*a*) *Vide* s. 21, note *g*, as to making affirmations instead of oaths.

(*b*) A bankrupt underwent examination with agents in attendance, and the minutes bore that the Sheriff was present. Held in an appeal incompetent to plead that the Sheriff was not present. (*M'Kay*, 24th Feb. 1863.)

(*c*) The trustee is not bound to put his questions in writing (*Mathie*, 28th May 1822); nor is he bound to prepare interrogatories and communicate them to the parties beforehand (*Robertson's Trustee*, 16th June 1827).

(*d*) A deposition on deathbed by the bankrupt before a justice of the peace, held not receivable under 54 Geo. III. c. 137. (*M'Intosh*, 29th Feb. 1828.)

(*e*) The following is that part of the Sheriff Court Act which applies to the mode of writing the evidence: "Where proof shall be allowed, a diet of proof shall be appointed, at which the evidence shall be led before the Sheriff, who shall, with his own hand, take a note of the evidence, setting forth the witnesses examined, and the testimony given by each, not by question and answer, but in the form of a narrative, and the documents adduced, and any evidence, whether oral or written, tendered and rejected, with the ground of such rejection, and a note of any objections taken to the admission of evidence, whether oral or written, allowed to be received; and the note of the evidence given by each witness shall be read over to him by the Sheriff, and signed by the witness (if he can write) on the last page, in open court, before the witness is dismissed: provided always, that in the event of the Sheriff being unavoidably prevented from taking such notes with his own hand, he shall dictate the same to any competent person he may select." (S. 10.)

(*f*) The trustee has the decision as to the examination being open. (*Wright*, 8th Dec. 1878.)

Penalty on refusal to answer, &c.

XCIII. If the bankrupt or any of such other persons shall refuse to be sworn (*a*), or to answer, to the satisfaction of the

SECT. 94.

Sheriff (*b*), any lawful (*c*) question put to him by the Sheriff or trustee, or by any creditor (*d*) with the sanction of the Sheriff, or without lawful cause shall refuse to sign his examination, or to produce books, deeds, or other documents in his custody or power relating to the estate, the Sheriff may grant warrant to commit him to prison, there to remain until he comply with the order, which warrant shall specify the question and answer, book, deed, document, or the refusal to swear or to sign the examination; and such warrant shall not be subject to the review of the Court of Session (*e*), but the bankrupt or person imprisoned may apply by written petition (without argument) to the Lord Ordinary for a recall of the warrant, and the Lord Ordinary shall order the petition to be served on the trustee or the creditor, and shall thereafter hear parties *viva voce*, and pronounce judgment (*f*).

(*a*) As to declarations instead of oaths, *vide* s. 21, note *g*.

(*b*) 1. The Sheriff cannot commit for *punishment*, but only for unsatisfactory answers. (*Vide* 2 B. C. 398.)

2. A Sheriff granted warrant of imprisonment against a bankrupt, as he was not satisfied with his oath; but the Court, on a proof which did not show that the books said to be lost were in his possession, granted liberation. (*Nicol*, 6th Feb. 1851.)

3. The word "Sheriff" includes "Sheriff-Substitute" (s. 4; *vide* s. 170, note *c*.)

(*c*) *Vide* s. 91, note *b*, as to what are lawful questions.

(*d*) 1. A mandatory held to have the same privilege of putting questions as the creditor. (*Smyth*, 23d Dec. 1843.)

2. The trustee is not entitled to object to a question by a creditor, upon the ground that the answer will be injurious to the general body of the creditors. (*Barstow*, 21st Feb. 1849; *vide Wright*, 7th Feb. 1852; 24 Jur. 230; 1 Stuart, 400.)

(*e*) An appeal under the same section (70) in 2 & 3 Vict. c. 41, was held competent against an order of the Sheriff upon a party to answer a question. (*Paul*, 21st Feb. 1855.)

(*f*) It is not necessary that a decision on the merits be forthwith given—the Court may first order a proof. (*Nicol*, 6th Feb. 1851.)

Penalty on latent partner of bankrupt company not coming forward.

XCIV. If any latent partner of a company whose estates have been sequestrated shall not, by intimation to the trustee, acknowledge that he is a partner, on or before the day appointed for the examination of the known partners, he shall not be entitled to the benefits or privileges of this Act, unless in an application for the same he shall satisfy the Lord Ordinary or the Sheriff that the omission proceeded from innocent mistake, or ignorance of the proceedings, or reasonable mis-

conception as to his liability as a partner, and unless he shall then follow out all necessary steps for remedying as far as possible the loss and inconvenience thence arising. SECT. 95.

XCV. The bankrupt, before the close of his examination (*a*), may make such additions to or alterations upon the state of his affairs as may have occurred to him to be necessary to give a full view of his affairs, which state, with the additions and alterations, shall be subscribed by the Sheriff and the bankrupt; and the bankrupt shall then take the following oath (*b*), which shall be engrossed in the sederunt-book, and subscribed as aforesaid, as relative to such state; and when the bankrupt is a partner with others, and examined respecting the affairs of the partnership, the words of the oath shall so far be varied as to make it applicable to the case: Bankrupt may correct his state, and then must take oath inserted in this Act.

"I do, in the presence of Almighty God, and as I shall Oath.
" answer to God at the great day of judgment, solemnly swear,
" That the state of my affairs subscribed by me as relative
" hereto (*c*) contains a full and true account, to the best of my
" knowledge and belief, of all the debts, of whatever nature,
" due to me, and of all my estate and effects, heritable and
" moveable, real and personal, wherever situated (the neces-
" sary wearing apparel of myself, my wife, and family, only
" excepted), as well as of all claims which I am entitled to
" make against any person or persons whatsoever, and of all
" estate in expectancy, or means, of whatever kind, to which I
" have an eventual right by contract of marriage, trust-deed,
" settlement, deed of entail, or otherwise; and that the said
" state likewise contains a full and true account of all debts
" due by me or demands upon me; and that I have delivered
" up the whole books, documents, accounts, title-deeds, and
" papers of every kind belonging to me which in any way
" relate to my affairs, and which were or are in my possession
" or under my power; and that I have made a full disclosure
" of every particular relating to my affairs: And further, I
" promise and swear, That I will forthwith reveal all and
" every other circumstance or particular relative to my affairs
" which may hereafter come to my knowledge, and which
" may tend to increase or diminish the estate in which my
" creditors may be interested, directly or indirectly."

(*a*) The bankrupt may be re-examined after taking the above oath. (*Mathie*, 28th May 1822; *vide* s. 88.)

(*b*) Or affirmation. (*Vide* s. 21, note *g*.)

(*c*) By the Act 54 Geo. III. c. 137, s. 25, the state of affairs was ordered to be engrossed in the sederunt-book, while by the oath, s. 33 of that Act, it was stated to be contained therein, and it is necessary that it still be so engrossed (s. 81.)

Powers of Second and subsequent Meetings of Creditors.

SECT. 96, 97.

Report by trustee after bankrupt's examination.

Powers of creditors over estate.

XCVI. Prior to the meeting of creditors after the examination of the bankrupt (*a*), or in the case of a deceased debtor prior to the first meeting after the election of the trustee, the trustee shall prepare a report setting forth the state of the bankrupt's affairs, and an estimate of what the estate may produce, which report he shall exhibit at the meeting of creditors, and give all explanations relative thereto; and the creditors assembled at such meeting may receive an offer of composition, as herein-after provided (*b*), and may, either at this or any other meeting (*c*), give directions for the recovery, management, and disposal of the estate (*d*); and when any part of the estate consists of land or other heritable property, it shall be optional to the creditors to determine whether the trustee is to bring such property to judicial sale, or to dispose thereof by voluntary public sale, or by private sale, as herein-after provided (*e*).

(*a*) *Vide* s. 87.

(*b*) *Vide* s. 139.

(*c*) *Vide* s. 82, note *b*.

(*d*) The trustee must act with the advice and assistance of the commissioners (s. 82, 85); by the direction of the creditors (s. 82, 96, 98; *vide* s. 88, note *b*); under the control and review of the Court (s. 86, 159, 169, and notes); and always within the limits of the Statute. (*Dundas*, 19th Jan. 1822; *Aytoun*, 28th May 1824; *Parlane*, 28th June 1825; *Maben*, 3d June 1837; *City of Glasgow Bank*, 28th Nov. 1863.) *Vide* DUTIES OF TRUSTEE.

(*e*) 1. It is competent to the creditors at this meeting to instruct the trustee to have the first dividend accelerated (s. 133 and 123.)

2. As to mode of sale, *vide* s. 82, note *b*; also s. 114.

Proceedings if bankrupt do not make a fair surrender.

XCVII. If it shall appear to a majority of the creditors (*a*) in number (*b*) and value assembled (*c*) at any meeting after the examination of the bankrupt (*d*), that he has not made a full and fair surrender of his estate, or that he has disposed of or concealed any part of his funds, to the prejudice of his creditors, or that his bankruptcy has been fraudulent, they may authorise the trustee to proceed against him in terms of law (*e*), at the expense of the estate.

(*a*) Qualified creditors (s. 49, note *b*, and par. 294, &c.)

(*b*) As to computing a majority in number, *vide* s. 101.

(*c*) Whether voting or not (s. 101, and notes).

(*d*) As to calling meetings, *vide* s. 98 and 99.

(*e*) *Vide* s. 178 and 162.

Calling of and Procedure at Meetings.

Sect. 98, 99, 100, 101.

When meetings to be called.

XCVIII. The trustee, or any commissioner with notice to the trustee (*a*), may at any time call a meeting of the creditors, and the trustee shall call such meeting, when required by one-fourth (*b*) in value of the creditors ranked on the estate, or by the accountant (*c*).

(*a*) No notice to creditors by post is necessary. (*Cookson*, 11th Dec. 1863.)

(*b*) *Vide* s. 146, note *d*, as to neutral creditors.

(*c*) Where a statutory meeting, from accidental circumstances, cannot be held at the time advertised, the Court may appoint a new meeting (*Myles*, 2d Dec. 1851, 1 Stuart, 99 ; *Ross*, 27th Feb. 1852); but if such should take place in the case of a meeting called by the trustee himself, under the above section, his course is to call another meeting in the usual way.

Notice of meetings.

XCIX. Notice of the day, hour, place, and purpose (*a*) of all meetings of creditors under this Act shall be advertised in the Gazette (*b*) seven days at least (*c*) before the day of the meeting, and such meeting may be adjourned to the following day.

(*a*) "The time and manner prescribed for advertising meetings of creditors must be very particularly observed, as these precautions enter into the very essence of the proceedings, and will on no account be dispensed with." (2 B. C. 351.) *Vide* Requisites of Meetings.

(*b*) 'Edinburgh Gazette' (s. 4). No other notice is necessary, *vide* s. 98, note *a*.

(*c*) As to computation of time, *vide* s. 5.

No notice to be sent in certain cases.

C. It shall not in any case be necessary to send any notification of the day or place of meetings by post to any creditor whose debt shall be under twenty pounds unless such creditor shall have given directions in writing that such notification shall be sent; and no notification shall be sent to any creditor who has directed that none shall be sent.

Rules as to computing majorities.

CI. All questions at any meeting of creditors shall be determined by the majority (*a*) in value of those present (*b*) and entitled to vote (*c*), unless in the cases herein otherwise provided for (*d*); and when, for the purpose of voting (*e*), the creditors are required to be counted in number, no creditor whose debt is under twenty pounds shall be reckoned in number, but his debt shall be computed in value.

(*a*) 1. *Vide* s. 82, note *b*, as to rights of individual creditors, and as to right of minorities in taking up claims abandoned or being compromised.

2. A meeting, although attended by only one qualified creditor, is a meeting under the Act. (*Cookson*, 11th Dec. 1863.)

(*b*) 1. A creditor "present" but declining to vote is to be reckoned as "pres-

SECT. 102. ent" in computing the requisite majority. (*M'Kay*, 19th Nov. 1864; *Gosling*, Queen's Bench (Exchequer Chamber), Rep. vol. XII. p. 328, 1850.)

2. Mandatories may vote (s. 63).

(*c*) *Vide* s. 49.

(*d*) The Act prescribes no form of procedure at meetings of creditors, except in the case of the first meeting (s. 68) for election of trustee, and therefore any questions as to the legality of the meeting, or the probativeness of the minutes, fall to be solved by principle and usage. 1. A meeting, in order to be legal, must be called in terms of the Statute (see s. 98 and 99). 2. It must be properly constituted—*i. e.*, it must be held at the time and place advertised, and there must be no means taken to exclude qualified creditors. If a section of the creditors, whether large or small, choose to secede from the rest and hold a meeting of themselves, it will plainly be null, just as if they had excluded these others from the meeting. Again, if the creditors should divide simply into two sections, and each hold a meeting, and each meeting pass its own resolutions, then the Court would require to deal with the matter by either cancelling the whole proceedings as irregular, or sustaining the resolutions as those of *one* meeting, though recorded in two minutes. In *Smith*, 8th July 1803, 2 B. C. 364, the Court held the proceedings at a separate meeting from that at which the interim factor attended to be inept, and the votes thrown away. But the report of this case is exceedingly meagre, and does not explain the circumstances under which the two meetings came to be held, nor the grounds of the decision. Besides, by 54 Geo. III. c. 137, s. 23, the presence of the interim factor with the sederunt-book was a statutory requisite; and accordingly, that circumstance seemed to determine the legality of the one meeting and the illegality of the other—an element of decision which does not exist in the matter of ordinary meetings under the present Statute. And in *M'Taggart*, 1st Feb. 1809, 2 B. C. 366, the Court expressed strong disapprobation of two minutes, but it does not appear that the Court cancelled the proceedings. 3. The meeting, when duly called and properly constituted, must furthermore conduct the business with regularity. If the creditors were quite unanimous on all points, it does not seem incompetent simply to write out a minute of the procedure, and let all those present subscribe it. But it is usual in all cases, and particularly in cases of difference of opinion among the creditors, that a preses be elected to keep order and sign the minutes, and that a clerk be appointed to write them. The minutes of such meetings are alone probative.

(*e*) *Vide* s. 4 as to meaning of word "vote."

Extent of Trustee's Right.

Vesting of estate in trustee.

CII. The act and warrant of confirmation in favour of the trustee shall *ipso jure* transfer to and vest in him or any succeeding trustee, for behoof of the creditors (*a*), absolutely and irredeemably (*b*), as at the date of the sequestration (*c*), with all right, title, and interest, the whole property (*d*) of the debtor (*e*), to the effect following (*f*):

Vesting of moveable estate.

1st, The moveable (*g*) estate and effects of the bankrupt, wherever situated, so far as attachable for debt, to the same effect as if actual delivery or possession had been

obtained, or intimation made at that date (*h*), subject always to such preferable securities (*i*) as existed at the date of the sequestration, and are not null or reducible. Sect. 102.

2d, The whole heritable estate belonging to the bankrupt in Scotland, to the same effect as if a decree of adjudication in implement of sale, as well as a decree of adjudication for payment and in security of debt, subject to no legal reversion, had been pronounced in favour of the trustee, and recorded at the date of the sequestration, and as if a poinding of the ground had then been executed (*j*), subject always to such preferable securities (*k*) as existed at the date of the sequestration, and are not null and reducible, and the creditor's right to poind the ground, as herein-after provided (*l*); and the right of the trustee shall not be challengeable on the ground of any prior inhibition (saving the effect which such inhibition may be entitled to in the ranking of the creditors) (*m*): Provided always, that such transfer and vesting of the heritable estate shall have no effect upon the rights of the superior, nor upon any question of succession between the heir and executor of any creditor claiming on the sequestrated estate, nor upon the rights of the creditors of the ancestor (except that the act and warrant of confirmation shall operate in their favour as complete diligence) (*n*): And if any part of the bankrupt's estate be held under an entail or by a title otherwise limited, the right vested in the trustee shall be effectual only to the extent of the interest in the estate which the bankrupt might legally convey, or the creditors attach. Vesting of heritable estate in Scotland.

3d, All real estate situated in England, Ireland, or in any of her Majesty's dominions, belonging to the bankrupt, and all interest in or regarding such real estate, which the bankrupt held, or to which he was entitled: Provided always, that as regards all freehold, copyhold, and leasehold estate in England, Ireland, or any of her Majesty's dominions (except Scotland), the act and warrant of confirmation shall be registered in the chief court of bankruptcy for the country in which the property is situated, in the like manner as an adjudication of bankruptcy or other similar process ought to be registered according to the law of that country, either in a separate book, or in the general book, as the Court of Bankruptcy shall order, to the intent that all persons concerned may have the same means of ascertaining whether any person has been adjudged a bankrupt according to the law of Scotland as they have or shall have of ascertaining whether any person has been adjudged a bankrupt according to the law Vesting of real estates in England, Ireland, and other British dominions.

SECT. 102.

for the time being of the country in which the property is situated; and no purchaser for valuable consideration of any freehold, copyhold, or leasehold estate (except in Scotland) shall be affected by any such bankruptcy until the act and warrant of confirmation shall have been so registered as aforesaid: Provided also, that where, according to the laws of England, Ireland, or other her Majesty's dominions, any deed or conveyance would require registration, enrolment, or recording, the act and warrant of confirmation shall be so registered, enrolled, or recorded according to the laws of England, Ireland, or other her Majesty's dominions; and if any purchase is made by any person for valuable consideration, and without notice of the sequestration, prior to the registration, enrolment, or recording of the said act and warrant of confirmation, such purchase shall not be invalidated by the existence of such act and warrant, or the subsequent registration, enrolment, or recording thereof.

(*a*) Creditors ranked (s. 121).

(*b*) The right of the creditors is, nevertheless, a mere right in security and for payment of their debts. (*Vide* s. 29, note *h*; *vide* BANKRUPT'S RIGHTS, also TRUSTEE'S RIGHTS.

(*c*) The date of the first deliverance is the date of the sequestration (s. 42).

(*d*) 1. As to interpretation of "property," *vide* s. 4.

2. No mention is made in these clauses as to heritable property in foreign countries: for of course the Legislature of this country has no power to deal with such property. No doubt the bankrupt is divested of it, as well as of all other property, so far as the Legislature can do so (s. 29); but in order to vest it in the trustee the bankrupt must grant the deeds necessary by the laws of the country where the property is situated (s. 81 and 105); or otherwise the creditors must take proceedings in that country to secure such property.

(*e*) Where the bankrupt holds the property *qua* executor, held that it does not fall to be distributed under the sequestration, and that a multiplepoinding was competent. (*Christie*, 27th June 1835.)

(*f*) To the above clauses, vesting the bankrupt's estate in the trustee, there fall to be added—(1) S. 108, whereby the sequestration operates as an arrestment and decree of forthcoming, and an executed or completed poinding; (2) S. 48, whereby the registration of the abbreviate of petition for sequestration and deliverance have the effect of an inhibition and citation in an adjudication; (3) S. 107, whereby the sequestration has the effect of a decree of adjudication for payment of the bankrupt's debts, principal and interest.

(*g*) "Moveable" includes "personal" (s. 4).

(*h*) Not declared to be equivalent to registration in the case of such property as ships' patents or copyright of designs.

(*i*) The trustee has an interest in these securities, and accordingly, in one

case he obtained interdict against a sale until he inspected the goods. (*Ross*, 23d Dec. 1826.) SECT. 103.

(*j*) Not declared to be equivalent to sasine or registration in the case of lands or leases.

(*k*) *Vide* note *i*, *supra*; also s. 114. As to expenses of sale, *vide* s. 121, note *b*.

(*l*) *Vide* s. 118.

(*m*) Inhibiting creditor preferred to proceeds of subjects over creditors whose debts were incurred after publication (*Ewing*, 29th June 1860). But *vide* INHIBITORS, RIGHTS OF.

(*n*) If the act and warrant be dated within three years from the ancestor's death, then his creditors will be thus preferred to his heritable property over the creditors of the heir. (Act 1661, c. 24; *vide M'Lachlan*, 15th June 1826, aff. 5th June 1829, 3 W. S. 449.)

Acquisitions of bankrupt after the sequestration to belong to the creditors.

CIII. If any estate (*a*), wherever situated, shall, after the date (*b*) of the sequestration, and before the bankrupt has obtained his discharge (*c*), be acquired by him, or descend or revert or come to him, the same shall *ipso jure* fall under the sequestration (*d*), and the full right and interest accruing thereon to the bankrupt shall be held as transferred to and vested in the trustee, as at the date of the acquisition thereof or succession, for the purposes of this Act (*e*); and the trustee shall, on coming to the knowledge of the fact, present a petition setting forth the circumstance (*f*) to the Lord Ordinary, who shall appoint intimation to be made in the Gazette (*g*), and require all concerned to appear within a certain time for their interest; and after the expiration of such time, and no cause being shown to the contrary, the Lord Ordinary shall declare all right and interest in such estate which belongs to the bankrupt to be vested in the trustee, as at the date of the acquisition thereof or succession thereto, to the same effect as as herein-before enacted in regard to the other estates (*h*); and the proceeds thereof, when sold, shall be divided in terms of this Act; and if the bankrupt do not immediately notify to the trustee that such estate has been acquired, or has come to him as aforesaid, he shall forfeit all the benefits of this Act (*i*), and it shall be competent to the trustee to examine him as aforesaid (*j*) in relation thereto: Provided always, that the rights of the creditors of the person from whom such estate shall come or descend to the bankrupt shall be reserved entire.

(*a*) 1. *Vide* interpretation of "estate" (s. 4).

2. A sum of damages for slander falls under this clause. (*Jackson*, 13th Nov. 1875.)

(*b*) As to date of sequestration, *vide* s. 42.

(*c*) As to bankrupt's discharge, *vide* s. 140 and 147.

(*d*) *Vide* s. 30 and 102.

SECT. 103. (*c*) The matter of the right to and the disposal of subsequent acquisitions is attended with difficulty. By the old Act (54 Geo. III. c. 137), there was no sequestration of such acquisitions, and no vesting of them in the trustee, and it was only by a supplementary sequestration that they were held capable of attachment. But in *Christie*, 19th Dec. 1835, the bankrupt died, and supplementary sequestration being considered incompetent, the trustee raised the question as to subsequent acquisitions in a declarator and adjudication against the heir. The Court was disposed to hold that the trustee had a right to the subsequent acquisitions of the bankrupt, but hesitated to award them to him for distribution among the creditors under the sequestration, as they would necessarily be distributed among those creditors to the utter exclusion of subsequent creditors (s. 38), and allowed the bankrupt's heir to show, as a bar to the trustee's claim, that the trustee and commissioners acquiesced in the bankrupt carrying on business, acquiring new assets, and contracting fresh debts. This case, then, decided that the trustee had no *exclusive* right to the new acquisitions. It was, however, never questioned that these prior creditors were entitled to share in or to compete for such assets with subsequent creditors in the ordinary way, as, of course, a sequestration, until it reaches the point of a discharge, does not wipe off a man's debts, nor tie up the hands of his creditors in any way. Accordingly, in *Fisken*, 7th June 1845, the creditors under a prior sequestration were admitted to a *pari passu* ranking with the creditors in a second sequestration upon the assets recovered under the latter sequestration. The same rule will fall to be applied under the present Statute.

There are important differences in the present Act from 54 Geo. III. c. 137. By this Act the subsequent acquisitions of the bankrupt stand sequestrated (s. 29, 103), and they are vested in the trustee (s. 103), for the exclusive benefit of the creditors under the sequestration (s. 121). No supplementary sequestration is thus required in order to attach such estates.

But while the creditors in a sequestration have thus a right to subsequent acquisitions, yet to make this more than a *personal* right—to make it a *real* right, such as the trustee is vested with in s. 102—there must be a petition to the Lord Ordinary, and a declarator pronounced upon it after all parties concerned are cited, which is somewhat equivalent to the old form of a supplementary sequestration. These parties may "show cause to the contrary." 1. It may be shown that the new estate is carried off by an English bankruptcy unrecalled (*Mein, infra*). 2. It may be shown that they are secured by a second sequestration (*Fisken, supra; vide Mein, infra*). 3. It may be shown, as in *Christie's* case, that the trustee is barred by acquiescence in a question with subsequent creditors. 4. Even the ordinary diligence of the law, if used before the trustee obtains his declarator, would seem to cut out the trustee's right, for really it is a mere question of priority of diligence. And the case of the newly acquired estate being heritable would not seem to be of any importance, as it does not appear that s. 48, in giving to the sequestration the effect of an inhibition, contemplated that this should apply to future acquisitions (s. 102; also Schedule D). And accordingly, in *Christie's* case (decided under s. 22 of 54 Geo. III. c. 137, which is the same on this point as s. 48 of this Act) this plea was disregarded.

In the above instances the trustee's exclusive right to the *acquirenda* will be lost. But the creditors under the first sequestration are entitled to compete for such estates, both *inter se* and with subsequent creditors, and for this purpose they have all the usual remedies of the law.

(*f*) Observed that it is necessary to specify the particular estate and mode and date of acquisition. (*Mein*, 15th Feb. 1855.) SECT. 104, 105.

(*g*) 'Edinburgh Gazette' (s. 4).

(*h*) *Vide* s. 102; also TRUSTEE'S RIGHTS.

(*i*) *Vide Trappes*, 3d Nov. 1871.

(*j*) *Vide* s. 87, and subsequent sections, as to mode of examining bankrupt.

CIV. Any person claiming right to any estate included in the sequestration may present a petition to the Lord Ordinary, praying to have such estate taken out of the sequestration, and the Lord Ordinary shall order the trustee to answer within a certain time, and on expiration of such time he shall proceed to dispose of the application (*a*). Subjects improperly included in sequestration may be struck out.

(*a*) 1. There is no longer any sequestration or adjudication of particular estates by the recent Sequestration Statutes, as there was by 54 Geo. III. c. 137, s. 29.

2. A law agent having received money for investment, but paid it into his private bank account until the transaction could be formally completed: held that it fell to be struck out of the sequestration. (*Macadam*, 5th Nov. 1872.)

CV. The bankrupt shall, if required, grant all deeds (*a*) necessary for recovering his property and feudally vesting his heritable estate in the trustee for the purposes of this Act (*b*); and if the bankrupt's title to any estate has not been completed, the trustee may complete titles in his own person, whom failing, in favour of any trustee who may succeed him, for behoof of the creditors (*c*), or in the person of the bankrupt; and superiors shall, if required, enter the trustee or the purchaser from him in terms of law; and the trustee may, without making up a feudal title in his person (*d*), and without concurrence of the bankrupt, grant conveyances of the heritable estate belonging to the bankrupt, with such procuratories, precepts, or other warrants, as the bankrupt might competently have granted, which conveyances shall be as effectual to the purchaser (*e*) as if they had been granted by the bankrupt with concurrence of the trustee, and shall not be affected by any inhibition against the bankrupt, reserving the effect of such inhibition in the ranking. Trustee may complete feudal titles or grant such rights as bankrupt could do.

(*a*) *Vide* s. 81, as to penalty on refusal.

(*b*) *Vide* s. 102; *vide* also TRUSTEE'S RIGHTS.

(*c*) Where the bankrupt had succeeded to certain subjects from his father, who left a settlement conveying them to the bankrupt under the burden of certain provisions to the family, which were declared real burdens, but the bankrupt made up no title: held that it was the right as well as the duty of the trustee to pass by the settlement and make up the bankrupt's title as heir of line, thus rendering the family mere personal creditors of the bankrupt. (*Miller*, 5th July 1836.)

SECT. 106, 107.

(*d*) *Vide* s. 102; also TRUSTEE'S RIGHTS.

(*e*) As to mode of selling estate, *vide* s. 82, note *b*.

Trustee may get property transferred to him, although the heir of the bankrupt has made up titles.

CVI. When sequestration is awarded against the estate of a person after his death, and his successor (*a*) has made up a title to his heritable estate, the trustee may apply by petition to the Lord Ordinary, praying that such estate shall be transferred to and vested in him, and the Lord Ordinary shall order the petition to be served upon such successor, and require him to answer the same within fourteen days; and an abbreviate of such petition and deliverance, in terms of the Schedule (A. No. 3) hereunto annexed, being recorded in the Register of Inhibitions kept at Edinburgh, shall have the effect of an inhibition, and the keeper of the register shall write on the said abbreviate a certificate in terms of the said Schedule (A. No. 2); and if on expiration of that period no cause is shown to the contrary, the Lord Ordinary shall declare such estate to be transferred to and vested in the trustee, as at the date of the sequestration (*b*), to the same effect as is hereinbefore provided in regard to the act and warrant of confirmation (*c*); and the trustee shall, within eight days thereafter, cause an abbreviate of such petition and deliverance to be recorded in the Register of Abbreviates of Adjudications, in terms of the Schedule (E. No. 3) hereunto annexed, and the keeper of the said register shall write on such abbreviate a certificate in terms of the said Schedule (E. No. 2).

Decree to be recorded in the Register of Adjudications.

(*a*) 1. As to interpretation of "successor," *vide* s. 4.

2. The trustee is entitled to the estates, although they have passed from the immediate successor to a second one. This was held under the same clause in 2 & 3 Vict. c. 41, s. 88 (*Barstow*, 16th Dec. 1843). This point is made clearer by the interpretation of "successor" in the present Act, s. 4.

(*b*) *Vide* s. 42, as to date of sequestration.

(*c*) 1. *Vide* s. 102; also TRUSTEE'S RIGHTS.

2. In a case where the estate had been managed by two heirs in succession, and various mortgages, &c., had been granted, the Court, in granting the trustee's petition, not only reserved preferable rights and securities as in s. 102, but also the objections of the parties holding them to the trustee's title to challenge such rights on grounds not competent to the heirs. (*Barstow, supra.*)

Effect of Sequestration on Ranking of Creditors.

Sequestration equivalent to an adjudication in competition;

CVII. The sequestration shall, as at the date thereof (*a*), be equivalent to a decree of adjudication of the heritable estates of the bankrupt for payment of the whole debts of the bankrupt, principal and interest, accumulated at the said date (*b*), and when the sequestration is dated within year and

day (*c*) of any effectual adjudication, the estate shall be disposed of under the sequestration, according to the provisions of this Act: Provided, that nothing herein contained shall affect the rights of any heritable creditor holding a power of sale preferable to the powers of the trustee. SECT. 108, 109.

(*a*) As to date of sequestration, *vide* s. 42.

(*b*) *Vide* s. 102; also TRUSTEE'S RIGHTS.

(*c*) As to computation of time, *vide* s. 5.

CVIII. The sequestration (*a*) shall, as at the date thereof (*b*), be equivalent to an arrestment in execution and decree of forthcoming, and to an executed or completed poinding (*c*); and no arrestment or poinding executed of the funds or effects of the bankrupt on or after the sixtieth day (*d*) prior to the sequestration shall be effectual (*e*); and such funds or effects, or the proceeds of such effects, if sold, shall be made forthcoming to the trustee: Provided, that any arrester or poinder before the date of the sequestration who shall be thus deprived of the benefit of his diligence shall have preference out of such funds or effects for the expense *bona fide* incurred by him in such diligence (*f*). And to arrestment and poinding. Diligence on or after sixtieth day before sequestration, or after it, ineffectual. Expenses of diligence.

(*a*) This clause applies to sequestrations of estates of deceased parties as well as living ones, no matter whether they are awarded within seven months after the death or not, and is without prejudice to s. 110. This decided on s. 83 and 84 of 2 & 3 Vict. c. 41, which are the same as s. 108 and 110 of this Act. (*Rough's Trustees*, 23d Jan. 1857.)

(*b*) As to date of sequestration, *vide* s. 42.

(*c*) *Vide* s. 102; also TRUSTEE'S RIGHTS.

(*d*) As to computation of the sixty days, *vide* s. 5.

(*e*) Creditors held not bound to loose arrestments under a mere reservation to be ranked preferably for the expenses (*Allan*, 28th Nov. 1835). It was also held that there was no need for a loosing at all. In this case the trustee presented a petition to the Sheriff for decree of delivery against the arrestees, which was granted. It was decided under 54 Geo. III. c. 137, s. 40, which is in the same terms as the above section.

(*f*) The expenses which form the preference are, in practice, understood to be limited to those attending the arrestment and poinding, and not the previous steps of process or diligence. (*Vide* s. 12, note *h*.)

CIX. The presenting of or concurring in a petition for sequestration, or the lodging a claim in the hands of the trustee, or the Sheriff, or preses at any meeting of creditors, shall interrupt prescription of the debt of the creditor so petitioning, concurring, or claiming, and in regard to such debt shall bar the effect of any statute of limitations in England or Interruption of prescription.

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Ireland, or other her Majesty's dominions, and although this sequestration shall be recalled, such interruption or bar shall, notwithstanding, be effectual (*a*).

(*a*) It would only be an interruption *quoad* the bankrupt. (*Crawford's Trustees*, 25th May 1827.)

Preferences in case of a deceased debtor.

CX. When the sequestration of the estates of a deceased debtor is dated within seven months after his death, any preference or security for any prior debt acquired by legal diligence on or after the sixtieth day (*a*) before his death, or subsequent to his death, and any preference or security acquired for a prior debt by any act or deed of the debtor which has not been lawfully completed for a period of more than sixty days before his death, and any confirmation as executor-creditor after the debtor's death, shall in these several cases be of no effect in competition with the trustee (*b*); and the estates and effects over which such preferences or securities shall have been obtained, or of which confirmation shall have been expede, shall belong to the trustee: Provided, that the creditor who is so deprived of the benefit of his diligence or confirmation shall have preference for payment out of the said estates or effects of the expenses *bona fide* incurred by him in such diligence or confirmation (*c*).

(*a*) As to computation of the above periods of time, *vide* s. 5.

(*b*) *Vide* TRUSTEE'S RIGHTS.

(*c*) *Vide* s. 12, note *h*.

Acts and payments by bankrupt after sequestration null, except in certain cases.

CXI. All payments and preferences or securities obtained by or granted to prior creditors, and all acts done or deeds granted by the bankrupt after the date of the sequestration (*a*), and before his discharge out of or in relation to the estate (unless with the consent of the trustee), shall, in the event of sequestration being awarded, be null and void; and the trustee shall be entitled to such preference or security, and to any money so paid, deducting any expense *bona fide* incurred; but if a *bona fide* purchaser is in possession of moveable effects received from the bankrupt after sequestration, but in ignorance thereof, and when ignorant thereof for a price paid, or which he is ready to pay, he shall not be obliged to restore the effects; and if a debtor, in ignorance of the sequestration, have paid his debt *bona fide* to the bankrupt, he shall not be obliged to pay it a second time to the trustee; and if the possessor of any bill or promissory note, which is payable by the bankrupt, with recourse on other parties, or of a security for a debt due by the bankrupt, shall have received payment of his debt from the bankrupt in ignorance of the sequestration,

and given up such bill, promissory note, or security to the bankrupt, such person shall not be liable to repay to the trustee the amount so received, unless the trustee shall replace him in the situation in which he stood (*b*), or reimburse him for any loss or damage. Sect. 112, 113.

(*a*) As to date of sequestration, *vide* s. 42.

(*b*) An offer by the trustee to return the documents is not replacement, but held that inquiry must be made to ascertain whether the documents were of the same value as when they were first delivered. (*Pearson*, 9th June 1876.)

Realisation of Heritable Estate.

CXII. A creditor holding a security over the heritable estate of the bankrupt, preferable to the right of the trustee, with a power to sell, may sell, in terms of his security, notwithstanding the sequestration (*a*), and it shall be competent to the trustee to concur therein in order to fortify the title; and the trustee or any posterior heritable creditor preferable to him may, by petition to the Lord Ordinary or to the Sheriff, compel the said creditor and the purchaser to account for any reversion of the price. Sale of heritable estate by creditor.

(*a*) 1. The trustee, in the same way as a postponed creditor, could still prevent the heritable creditor from selling, notwithstanding the above section and s. 107, if he could qualify substantial injury to the estate—*e.g.*, from the property being sold at a wrong time, or in an improper way. (*Beveridge*, 17th Jan. 1829.)

2. It does not appear that a heritable creditor is prevented from bringing a judicial sale. Where under 54 Geo. III. c. 137, a creditor brought a judicial sale, a judicial factor different from the trustee in the sequestration was appointed. (*Bank of Scotland*, 2d July 1831.)

CXIII. If a creditor holding a heritable security, with a power to sell, concur with the trustee in bringing the estate to sale, the trustee shall sell the same in his own name, and the articles of roup (*a*) and conveyance to the purchaser shall be executed by the trustee, with consent of such creditor and the commissioners (*b*); and the price (*c*) shall be paid by the purchaser to the parties legally entitled thereto, and in so far as not paid at the time of the delivery of the conveyance, it shall be consigned in the bank in which the money of the sequestrated estate is deposited; which payment or consignation of the price shall free and discharge the estate sold and the purchaser from the security of the consenting creditor, whether the debt in such security be satisfied or not, and from all securities postponed to the security of such creditor (*d*). Sale by trustee with concurrence of heritable creditors. Discharge of burdens on sale.

(*a*) *Vide* s. 184 as to stamps.

(*b*) Two commissioners are a quorum (s. 4.)

SECT. 114, 115.

(*c*) Of course under deduction of the expenses of sale, and perhaps, also, of such outlays as are necessary for the sale and beneficial to the heritable creditor, such as payment of a lien over the titles, or the like. (*Vide Brock*, 8th March 1825; *M'Lean*, 29th Nov. 1825; *Globe Insurance Company*, 28th Feb. 1839.)

(*d*) As to the modes of sale, *vide* s. 82, note *b*.

Sale by trustee alone.

CXIV. If the creditors (*a*), at the meeting held after the examination of the bankrupt, or at any other meeting called for the purpose (*b*), resolve that the trustee shall dispose of the heritable estate by public sale or bring it to judicial sale (*c*), and if such resolution has been made before a heritable creditor having a power of sale shall have commenced proceedings for sale, or if such proceedings, after being commenced prior to the date of such resolution, have thereafter been unduly delayed, such creditor shall not be entitled to interfere with the sale by the trustee; and if a public sale of the heritable estate be resolved on, such sale shall be made by auction at the upset price (*d*) and in the manner which shall be fixed by the trustee, with consent of the commissioners (*e*): Provided always, that the estate shall not be sold for less than the upset price, and that such upset price shall not be less than sufficient to pay the debt, principal, interest, and expenses of the heritable creditor (*f*).

(*a*) A majority in value (s. 101) of qualified creditors (s. 49, note *b*, par. 294, &c.)

(*b*) *Vide* s. 96.

(*c*) *Vide* s. 82, note *b*.

(*d*) Subject to the control of the Court on cause shown. (2 B. C. 416.)

(*e*) A majority is a quorum (s. 4).

(*f*) As to modes of sale, *vide* s. 82, note *b*.

Trustee may with approval of accountant sell by private bargain.

CXV. It shall be competent for the trustee, with concurrence (*a*) of a majority of the creditors (*b*) in number and value, and of the heritable creditors, if any, and of the accountant, to sell (*c*) the heritable estate by private bargain, on such terms and conditions regarding price and otherwise, as the trustee, with concurrence of those parties, may fix (*d*).

(*a*) As to neutral creditors, *vide* s. 146, note *d*.

(*b*) 1. Qualified creditors (s. 49, note *b*).

2. It does not specify that this majority is to be a majority of creditors *at a meeting*. Even s. 96, which refers to the above section, does not make it clear. (*Vide* the close of that section.)

(*c*) As to what is a compromise under s. 176 and not a sale, *vide Dalzell*, 12th Dec. 1876; also s. 176, and notes.

(*d*) As to modes of sale, *vide* s. 82, note *b*.

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Trustee to make up a scheme of ranking and division of price.

CXVI. It shall be the duty of the trustee to make up a scheme of ranking and division of the claims of the heritable creditors and other creditors (*a*) on the price of the heritable estate sold; and such scheme of ranking and division shall be reported by him to the Lord Ordinary or either division of the Court of Session; and the judgment thereon shall be a warrant for payment out of the price against the purchaser of the heritable estate (*b*).

(*a*) Such as inhibiters (s. 102 and 105).

(*b*) This section applies to sales under the three preceding sections.

Court may grant interim warrant for payment out of price.

CXVII. It shall be competent for the Lord Ordinary or the Court, on application by the trustee or any creditor interested, with a report thereon by the Accountant in Bankruptcy, and on cause shown, to grant an interim warrant for payment of preferable claims out of the price of the estate, or to authorise an interim scheme of division out of the price, which scheme of division shall be disposed of as the scheme of division already provided for.

Heritable creditor's right to poind the ground limited.

CXVIII. No poinding of the ground which has not been carried into execution by sale of the effects sixty days before the date of the sequestration, and no decree of maills and duties on which a charge has not been given sixty days before the said date, shall (except to the extent herein-after provided) be available in any question with the trustee: Provided, that no creditor who holds a security over the heritable estate preferable to the right of the trustee shall be prevented from executing a poinding of the ground, or obtaining a decree of maills and duties after the sequestration, but such poinding or decree shall, in competition with the trustee, be available only for the interest on the debt for the current half-yearly term, and for the arrears of interest for one year immediately before the commencement of such term (*a*).

(*a*) By the old law, a heritable creditor who had obtained decree of poinding of the ground prior to sequestration, was held entitled to proceed with the same to the exclusion of the trustee (*Bell*, 3d Dec. 1831). And in *Campbell*, 13th Jan. 1835, *after* sequestration, but before confirmation of the trustee, a heritable creditor raised and executed a summons of poinding the ground of lands in the natural possession of the bankrupt: held that the creditor had a preference over the moveables on the lands in competition with the confirmed trustee. The heritable creditor was, by the above section, limited in his poinding to three half-years' interest. But by the Conveyancing (Scotland) Act, 1874, 37 & 38 Vict. c. 94, s. 55, it is enacted that "section 118 of the Bankruptcy (Scotland) Act, 1856, is hereby repealed." And it is provided that "all heritable creditors who have been in possession under their securities, and whose right to the rents collected by them has not been challenged by action previous to the commencement of this Act, shall be entitled to retain and apply

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all rents collected by them in the same manner as they might have done if the provisions of the section hereby repealed had not been enacted." Now held that the repeal of s. 118 leaves the right of the poinding creditor to be regulated by s. 102 and the common law; and a heritable creditor having executed a summons of poinding of the ground prior to the trustee's confirmation was to be preferred to the moveables. (*Royal Bank*, 6th July 1877.)

Landlord's hypothec saved.

CXIX. Nothing in this Act contained shall affect the landlord's right of hypothec (*a*).

(*a*) 1. The landlord's right is preferable over (1.) The crops of farms for the rent of that year of which they are the produce; and over (2.) The cattle and stocking of farms, and the furniture, &c., of urban subjects, for the current year's rent, and also for last year's rent, if more than three months from the last term of payment have not expired.

2. The hypothec is valid against creditors and subsequent landlords for three months after the last term of payment. (2 B. C. 33.)

Creditors may purchase.

CXX. When any estate is sold publicly by virtue of this Act, it shall be lawful for any creditor (*a*) to purchase the same; but the trustee (*b*) or commissioners, or adjudger (*c*), selling as aforesaid, shall not be entitled to purchase.

(*a*) This includes heritable creditors. (*Cruickshank*, 15th Feb. 1849.)

(*b*) 1. Where a purchase was made by the son of a trustee for the trustee's behoof, and the trustee had otherwise misconducted himself, a statutory number of the creditors were held warranted in petitioning for his removal, and the trustee was found liable in expenses. (*Brown*, 23d Dec. 1848.)

2. Where the trustee purchased an estate, and, consequently, the sale was null, he was found liable for the difference between his offer and the sum realised. (*White's Trustee*, 13th Feb. 1851.)

3. The prohibition does not extend to the trustee's law agent. (*Noble*, 4th Nov. 1876.)

(*c*) The word "adjudger" is here by mistake. In the original bill it was provided that adjudgers infeft for two years might sell, but this clause was afterwards struck out. The word "adjudger" in the above section was intended to apply to that clause.

Payment of Dividends.

Realised estate to be a fund of division.

CXXI. The whole estate (*a*), when reduced into money, shall, after paying all necessary charges and a commission to the trustee (*b*), be divided among those who were creditors of the bankrupt at the date of the sequestration (*c*), ranked according to their several rights and interests.

(*a*) The whole assets of a bankrupt, whether he carry on business as a company or as an individual, are massed together and divided equally among both sets of creditors (*Reid*, 10th July 1828). *Vide Cullen*, 16th July 1842, where the whole estates of a person carrying on business in two counties under different firms were held to be one.

(*b*) By s. 102 the trustee is vested in the estate subject to "all preferable securities; and "securities" by s. 4 are held to mean "securities heritable or moveable, and rights of lien, retention or preference, and conveyances thereof, and any part thereof." The expenses attending the sequestration therefore fall on the *ordinary* funds of the estate. Two special cases may be noticed—the case of a heritable creditor and the case of an adjudger. 1. In regard to a heritable creditor, the Statute merely provides that, in the case of the trustee selling the heritage, he shall not sell it at a less price than is sufficient to pay the debt, principal, interest, and expenses of the heritable creditor (s. 114). 2. In the case of adjudgers, it was held that the expenses of bringing the sequestration formed no charge against the proceeds of the adjudged property, the adjudications being preferable and not reducible (*Taylor*, 1st Feb. and 7th March 1840). This point was raised under s. 51 of 2 & 3 Vict. c. 41, which is in similar terms to s. 41 of the present Statute.

(*c*) 1. As to creditors in a first sequestration ranking with creditors in a second sequestration, *vide* s. 103, note *e*.

2. The trustee is not bound to pay the claim of a creditor who has merely a decreee of constitution against him *qua* trustee (*Crichton*, 21st March 1866), but only ranks him.

Workmen's wages to be privileged.

CXXII. The wages of workmen, and of clerks and shopmen and servants employed by the bankrupt, where such wages do not exceed sixty pounds per annum, shall be entitled to the same privilege as the wages of domestic servants to the extent of a month's wages prior to the date of sequestration being awarded, or where sequestration is not awarded prior to the concourse of diligence for distribution of the estate of a party being notour bankrupt (*a*).

(*a*) This section is now repealed and a new enactment made as to clerks, shopmen, servants, and workmen. (*Vide* 38 & 39 Vict. c. 26, *postea*.)

Creditor to produce oath, &c., two months before payment of first dividend, and one month before subsequent dividends.

CXXIII. To entitle any creditor to the payment of the first dividend, *he shall produce* as is herein-before directed (*a*), *his oath and grounds of debt* (*b*), at least *two months* (*c*) *before the time fixed for payment of the first dividend* (*d*), when such time of payment shall not have been accelerated, or one month before the time fixed for payment of the first dividend where such time shall have been accelerated (*e*); and to entitle any creditor to payment of any of the subsequent dividends, he shall produce, as aforesaid, his oath and grounds of debt at least one (*f*) month before the time fixed for payment of the dividend which he means to claim: Provided that if a creditor has not produced his oath and grounds of debt in time to share in the first dividend, but has done so in time to share in the second dividend, he shall be entitled, on occasion of payment of the second dividend, to receive out of the first of the fund (if there be sufficient for that purpose) an equalising dividend corresponding to the dividend he would have drawn

SECT. 123. if he had claimed in time for the first dividend; and the same rule shall apply as to all subsequent dividends.

(*a*) *Vide* s. 49. If the failure to *claim* arises from want of notice from the trustee as prescribed by s. 87, the creditor may obtain interdict against payment of the dividend. (*Scobie*, 23d Nov. 1869.)

(*b*) Failure to produce vouchers cuts the creditor out of the first dividend (*Wright*, 19th Nov. 1842). But if the creditor is not in possession of accounts and vouchers to lodge with his claim at the statutory period, he is to state in his oath the cause of their non-production, and in whose hands, to the best of his knowledge, the same are, and this oath will entitle him to have a dividend set apart till a reasonable time be afforded for their production, or for otherwise establishing his debt (s. 50). These requisites must, however, be complied with. In *Holliday*, 11th July 1848, where the first item in the account was, "To amount of account rendered, £435, 10s.," and the account was not produced, nor any reason assigned for its non-production, the claim was rejected, and no additional evidence was permitted. As, however, it is impossible to have accounts and vouchers for every claim, and, indeed, some claims, from their very nature, do not admit of them, the Legislature, while not giving to the creditors in such debts the benefit of petitioning (s. 21), or voting (s. 50), yet did not contemplate that they should be precluded from a ranking. Accordingly, a reasonable time is to be allowed in certain circumstances for establishing the debt (s. 50), which the creditor may do if he chooses by raising an action against the bankrupt and calling the trustee as a party (*Walker*, 14th May 1835). In adjudicating on the claims, the trustee may require further evidence in support of any claim (s. 126), and if the trustee fail to do so, the Court may call for it (*Pilling*, 30th June 1857). Again, s. 58 contemplates that both Sheriff and trustee are to call for evidence in any discussion before them. The practice is to admit such evidence. 1. In *Douglas*, 29th Feb. 1848, where the trustee rejected a claim, as several items in the account-current were unvouched, the Court allowed a diligence to recover documents. 2. While a creditor in an appeal from a trustee's deliverance cannot produce vouchers of debt which ought to have been produced before, yet he may produce documents to support vouchers timeously produced—*e. g.*, to explain circumstances under which an erasure in a bill was made (*Ker*, 8th Feb. 1845). 3. It is also the practice in such appeals for the Court to allow parole evidence (*Kerr*, 22d Feb. 1849). As to nature of vouchers, *vide* s. 49, note *i*.

(*c*) As to computation of time, *vide* s. 5; *vide* Schedule B, note *b*.

(*d*) *Vide* s. 129.

(*e*) Creditors generally will know the time fixed for payment of the first dividend by Gazette notice (Schedule B); and creditors claiming, or in the bankrupt's state of affairs, will know it by trustee's circulars (s. 87), intimating the bankrupt's examination, &c. But if, at the meeting subsequent to the bankrupt's examination, which is subsequent both to the Gazette notice and the circulars, it be resolved to accelerate, in terms of s. 133, payment of the first dividend, some steps should be taken to make this public to the creditors. The Statute makes no provision in such cases for any notice to absent creditors, although, when the dividend is postponed, a Gazette notice is given (s. 134). But as the sanction of the Court is needed for such

acceleration, the Court will no doubt see that the necessary steps are taken for the protection of absent creditors.

(*f*) This is now altered to *two* months. (Act 1857, s. 5.)

Creditors resident abroad may lodge oath at later periods.

CXXIV. When any creditor not resident within Great Britain or Ireland (*a*) at the date of the deliverance awarding sequestration, or at any time within five months thereafter (*b*), shall lodge his oath and grounds of debt fourteen days previous to any time fixed for payment of a dividend, though not in time to entitle such creditor to participate in such dividend, the trustee shall make such deduction from the divisible fund as shall be equal to the dividend which would have been payable to such creditor had his oath and grounds of debt been timeously lodged and his claim been sustained; and the sum so deducted shall form part of the fund for division on the occasion of payment of the next dividend (*c*).

(*a*) *Vide* s. 23, note *b*.

(*b*) As to computation of time, *vide* s. 5.

(*c*) The creditor may claim an equalising dividend (s. 123).

Trustee to make up and exhibit to commissioners state of funds.

CXXV. Immediately on the expiration of four months (*a*) from the date of the deliverance actually awarding sequestration, the trustee shall proceed to make up a state of the whole estate of the bankrupt, of the funds recovered by him, and of the property outstanding (specifying the cause why it has not been recovered), and also an account of his intromissions, and generally of his management; and within fourteen days (*b*) after the expiration of the said four months the commissioners (*c*) shall meet and examine such state and account and ascertain whether the trustee has lodged the moneys recovered by him in bank or not, and if he has failed to do so they shall debit him with a sum at the rate of twenty pounds on every one hundred pounds (*d*) not so lodged, and so after that rate on any larger or smaller sum, being not less than fifty pounds (*e*); and they shall audit his accounts, and settle the amount of his commission (*f*), and authorise him to take credit for such commission in his accounts with the estate; and they shall certify, by a writing under their hands engrossed or copied in the sederunt-book, the balance due to or by the trustee in his account with the estate as at the expiration of the said four months; and they shall declare whether any and what part of the net produce of the estate, after making a reasonable deduction for future contingencies, shall be divided among the creditors (*g*).

Commissioners to resolve as to payment of dividend, &c.

(*a*) 1. Unless the dividend is accelerated (s. 133 and 135).

2. Where the states and accounts could not be made up at the statutory

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period, in consequence of there being a competition for the trusteeship, authority was given to the trustee to take the steps preparatory to the payment of the dividend as at the expiration of ten months instead of six months as fixed by the Act. (*Cleugh*, 18th Jan. 1843.)

(*b*) As to computation of time, *vide* s. 5.

(*c*) A majority is a quorum (s. 4).

(*d*) Per annum. (*Vide* s. 83.)

(*e*) He is, in addition to this penalty, subject to dismissal (s. 83).

(*f*) 1. As to fixing remuneration under a composition settlement, *vide* s. 141.

2. The amount of commission is a question of circumstances. In one case 25 per cent was thought too much, although, as it was sanctioned by the creditors, the Court allowed it (*Bruce*, 7th July 1825); but 5 per cent has generally been allowed (*Boaz*, 3d Dec. 1829; *Thomson*, 31st May 1834).

3. If the trustee appeals against the deliverance fixing the commission, the commissioners fall to be cited; and held entitled to their costs out of estate up to the date of accountant's report, which was ordered by the Lord Ordinary. But held liable in expenses to trustee for contesting the report. (*Russell*, 26th Nov. 1869.)

(*g*) The commissioners may postpone the dividend (s. 134).

Trustee to examine and reject or admit claims, and make up list of creditors entitled to payment of dividend;

CXXVI. The trustee shall also within the said fourteen days (*a*) examine the oaths and grounds of debt, and in writing reject or admit them (*b*), or (*c*) require further evidence in support thereof (*d*), for which purpose he may examine the bankrupt, creditor, or any other party on oath relative thereto (*e*); and in case he shall reject any claim, he shall in his deliverance state the grounds of such rejection (*f*); and he shall complete the list of the creditors entitled to draw a dividend, specifying the amount of their debts, with interest thereon to the date of the sequestration, and distinguishing whether they are ordinary creditors or preferable (*g*) or contingent (*h*), and he shall make up a separate list of any creditors whose claims he has rejected in whole or in part.

(*a*) By 2 & 3 Vict. c. 41, s. 104, the trustee was to examine the oaths, &c., *if a dividend was to be made*, but by the above section this step is imperative and unconditional. This process is called the *ranking* (*Henderson*, 19th July 1849), and it signifies under the Act ranking with a view to a dividend (s. 51, 52, 65, 66, 121); but it is required for other purposes—*e. g.*, to enable creditors to apply for recall (s. 32), and to have meetings called (s. 98).

(*b*) 1. Where a creditor claims a preference, the trustee is entitled to rank him as an ordinary creditor, rejecting the claim for a preference. (*Forbes*, 2d July 1851.)

2. The trustee held not barred from rejecting a claim, merely because his clerk had adjusted the claim with the creditor, and received it as correct. (*Holliday*, 11th July 1848.)

3. Where a creditor was duly ranked under 54 Geo. III. c. 137 for a divi-

dend and no objection was stated to the ranking within the statutory period, held that the trustee could not retain the dividend on the ground that he had so ranked it from an error. (*Hamilton*, 23d Nov. 1830.) SECT. 126.

4. The trustee may find it necessary to admit the creditor to a ranking *conditionally—i. e.*, on the condition of the creditor freeing the estate of a ranking which may take place on a claim from which the estate has a right of relief against the creditor. This case, as well as the case of contingent claims, are provided for in s. 129, in the way of consignation of dividends. This mode of ranking was pursued under 54 Geo. III. c. 137, s. 45. See *Gibb*, 12th May 1838.

5. The trustee, however, is not entitled to insist on an assignation of collateral securities on the ground of the bankrupt being a cautioner merely, as a dividend is not full payment. (*Ewart*, 5th May 1865, H. of L.)

6. Where the same firm had a commission of bankruptcy issued against it in Australia, and six weeks later a sequestration was awarded in Scotland, and with concurrence of all parties both processes were followed out, the Court sustained a scheme of division by the trustee, giving an equalising dividend to those creditors who had not claimed in the Australian bankruptcy. (*Stewart*, 10th July 1851.)

(*c*) The trustee cannot reject the claim and at same time call for further evidence; and in a case where he did so, and no appeal being lodged, an interdict against payment of dividend was granted. (*Ritchie*, 14th Jan. 1875.)

(*d*) 1. If the trustee does not call for further evidence, the Sheriff, under an appeal, may do so, although within two months of payment of the first dividend (*Pilling*, 30th June 1857). In this case the evidence called for was the bankrupt's books, &c., in the trustee's hands; and it is not decided whether it would be competent to call for documents in the claimant's own hands in the face of s. 123, requiring creditors to lodge their grounds of debts within four months. The above decision occurred under 2 & 3 Vict. c. 41, s. 104, which, so far as it goes, is the same as the above section.

2. It is the *duty* of the trustee to call for evidence; and if he does not do so, but simply rejects the claim, he takes the risk of paying the expenses of an appeal. (A. & B. 26th Nov. 1865; *Purvis*, 13th May 1869.)

3. And in an appeal it is within the discretion of the Court to remit back to the trustee to call for evidence, or to order proof itself. (*Oliver*, 21st Jan. 1869; *vide Ritchie*, 14th Jan. 1875.)

(*e*) This is a new and somewhat singular power conferred on the trustee, and it is a little difficult to see how it can be exercised. He has power by the Statute to examine the bankrupt before the Sheriff, and the mode of compelling the bankrupt to attend and undergo examination is laid down; but, in this section, there is no machinery by which he can summon, or cause either bankrupt or creditor, far less third parties, to appear before him, and give evidence. It is true that the bankrupt might forfeit the benefits of the Act if he did not obey the summons; and it is also true that the creditor might be held as confessed, and his claim rejected, if he did not attend; but there is no such penalty against third parties. Perhaps the proper way would be to apply to the Judge Ordinary for a warrant to cite witnesses, as arbiters are daily under the necessity of doing under submissions.

(*f*) Where a trustee rejected a claim without assigning any reason, the Sheriff-Substitute at Perth held that, as it was not competently rejected, the claimant must fall to be ranked, upon the ground that the above clause as to

SECT. 127. the trustee's rejection of claims was imperative; but Lord Ivory reversed, and held it to be only directory. (*Vide Adcock*, s. 127, note *f*.)

(*g*) The following debts are preferable, and they rank in the order in which they are here given: 1. Deathbed and funeral expenses; 2. Servants' wages (s. 122, note *a*); 3. Rent (s. 119, note *a*); 4. Crown taxes; 5. Poor-rates; and, 6. Certain other special claims, such as the money of a friendly society in the hands of an office-bearer, or the rates payable under the Ministers' Widows' Fund Act. (*Vide* 2 B. C. 156.)

(*h*) *Vide* s. 49; also. s. 53 as to contingent claims.

And to publish and send notice of payment of dividend.

CXXVII. The trustee shall, within eight days after the expiration of such fourteen days (*a*), give notice in the Gazette (*b*) published next after expiration of such fourteen days (*c*) of the time and place of the payment of the dividend (*d*), and also notify the same by letters put into the post-office on or before the first lawful day after the said fourteen days, addressed to each creditor (*e*), in which he shall specify the amount (*f*) of the claim and proposed dividend thereon, and when he has rejected any claim he shall notify the same to the claimant by letter as aforesaid, which letter shall also contain a copy of his deliverance, and specify the amount of the claim; and a certificate by the trustee or an execution by a messenger or Sheriff-officer that such letters have been put into the post-office shall be sufficient evidence thereof; and if any creditor (*g*) be dissatisfied with the decision (*h*) of the trustee, he may appeal by a short written note to the Lord Ordinary or to the Sheriff (*i*); but if no such note be lodged with and marked by the Bill Chamber or Sheriff Clerk (as the case may be) before the expiration of fifteen days from the date of the publication in the Gazette of the said notice (*k*), the decision of the trustee shall be final and conclusive so far as regards that dividend; and in case the claim have been rejected, such decision shall be without prejudice to any new claim being afterwards made in reference to future dividends, but which new claim shall not disturb prior dividends.

Creditors may appeal within a limited period.

(*a*) It was unnecessary to prescribe that the notice was to be given within eight days after the expiration of the fourteen days, when it is required to be given in the first Gazette after that period.

(*b*) The 'Edinburgh Gazette' (s. 4).

(*c*) As to computation of time, *vide* s. 5.

(*d*) *Only, of course, if there is to be one.* If there is to be none at present the trustee will not give any such notice, nor notify by letter, but advertise the postponement of the dividend in the Gazette (s. 134).

(*e*) That is, each claimant (s. 49).

(*f*) Where the amount was not set forth in the letter an appeal was sus-

tained, but the Court remitted to the Lord Ordinary to go into the merits, reserving all questions of expenses. (*Adcock*, 9th Dec. 1843.) SECT. 128, 129.

(*g*) 1. An appeal is competent to one claimant against a judgment of the trustee admitting the claim of another. (*Morris*, 21st Jan. 1843.)

2. Of course the bankrupt has an interest to appeal.

(*h*) 1. Where the trustee has given no decision, but simply an order to produce evidence, it is appealable under s. 169. (*Brown*, 5th July 1859.)

2. Where a creditor's claim to a particular fund was rejected, and another preferred, held that it was not necessary for the unsuccessful creditor to appeal against the deliverance preferring the successful creditor, but only against the deliverance rejecting his own claim. (*Marshall*, 14th Feb. 1867.)

3. And where a creditor appealed against the deliverance on his own claim, it was held to bring under review the general scheme of ranking without any appeal against any deliverance on any other claim thereby preferred. (*Baird & Brown*, 26th Jan. 1872.)

(*i*) 1. If expenses are found due to a creditor under an appeal, or any other litigation with the trustee, no part of the expenses paid by the trustee is to affect his dividend. (*Tastet*, 1st Dec. 1825; *Scott*, 12th June 1822; *Shuurmans*, 7th March 1829; *Girdwood*, 24th Nov. 1821; *Houston*, 25th Nov. 1841; *Adam*, 17th Nov. 1866.)

2. In the same way no part of the trustee's costs is to affect such creditor's dividend if expenses have been found due to neither party. (*Scott, supra.*)

3. If the appellant is in England, he must sist a mandatory. (*Ford*, 18th June 1844.)

4. The mode of raising, conducting, and disposing of appeals against those decisions of the trustee, is in practice the same as in the case of appeals generally under s. 169.

5. The word "Sheriff" includes Sheriff-Substitute (s. 4; *vide* s. 170, note *e*).

(*k*) In the case of ordinary appeals from a trustee's deliverance, the appeal days run from the date of the deliverance (s. 169).

CXXVIII. The trustee shall, before the expiration of six months (*a*) from the date of the deliverance actually awarding sequestration, make up a scheme of division of the fund directed by the commissioners to be divided (*b*), and apportion the same, according to their respective rights, among those creditors whose claims have been sustained by him or by the Lord Ordinary or Sheriff, or who shall have appealed against his decision, and which scheme shall be patent to all concerned, and shall send notice to each creditor of the amount of the dividend to which he may be entitled (*c*). Trustee to make up a scheme of division.

(*a*) 1. Unless the dividend is accelerated or altered (s. 133 and 135).

2. As to computation of time, *vide* s. 5.

(*b*) *Vide* s. 125.

(*c*) *Vide* s. 127 as to notices.

CXXIX. On the *first lawful day after the expiration of six months* (*a*) *from the date of the deliverance actually awarding* Dividends to be paid,

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and those disputed or claimed by contingent creditors to be lodged in bank.

sequestration, and at the place appointed, the trustee *shall pay* to the creditors the dividends allotted to them respectively in terms of the said scheme (*b*); and he shall lodge the dividends apportioned to those claims which are under appeal, but not finally determined, and the dividends effeiring to contingent creditors, or other claimants, not then entitled to uplift the same, in the bank appointed by the creditors (*c*), or failing such appointment, in any joint-stock bank of issue in Scotland in a separate account, or if the money be deposited in bank, he shall transfer it to a separate account in name of himself and the commissioners, to remain therein until the said appeals be disposed of (*d*) or the dividends become payable (*e*).

(*a*) 1. Unless the dividend is accelerated or altered (s. 133 and 135).

2. As to computation of time, *vide* s. 5. *Vide* Schedule B, note *b*.

(*b*) 1. *Vide* s. 126, note *b*.

2. Where A was ranked for a dividend, and B, a creditor of C, alleged that the ranking was for C's behoof as having paid the debt ranked, and thereupon arrested the dividend in the trustee's hands for a debt he held against C, and raised a forthcoming, as also a reduction of the ranking, and a declarator to the effect that the dividend was truly due to C,—held (1.) That the dividend was payable to A and not arrestable as due to C; and (2.) That as the ranking was not objected to within the statutory period, it could not be challenged; but (3.) Observed that a direct action might lie against A for the dividend as received by him for the use and behoof of C. (*Barbour*, 19th Nov. 1835.)

3. The dividends are assignable, but the indorsation of bills ranked will not transfer the dividends thereon. (*Wallace*, 8th Jan. 1821.)

(*c*) *Vide* s. 82.

(*d*) Held that a dividend lodged in bank under this clause in the late Statute went, upon the dismissal or abandonment of the appeal, into the fund for the second dividend, and was not divided as a supplementary dividend among the creditors ranked for the first dividend. (*Blair*, 20th Feb. 1844.) In this way the creditor whose appeal was abandoned was in time to claim an equalising dividend.

(*e*) The trustee was held personally liable for a sum which he should have lodged, as also for interest, but not annually accumulated. (*Houston*, 20th May 1842.)

Second Dividend.

Trustee to make up state, &c., and commissioners to resolve as in case of first dividend.

CXXX. On the expiration of eight months (*a*) from the date of the deliverance actually awarding sequestration, the trustee shall again make up a state as herein-before provided, which he shall within fourteen days after the expiration of the said eight months exhibit to the commissioners, who shall meet and examine and audit the same, and perform the other acts and duties incumbent on them, in manner before specified (*b*), and direct a second dividend to be paid, if there shall be funds to pay the same; and if the commissioners shall direct a dividend to be paid, the trustee shall also make up lists of

the creditors who are entitled and who are not entitled to payment of the dividend, and frame a scheme of division, and notify in the Gazette and by letters, and any creditor may appeal, all as is herein-before provided with respect to the first dividend (*c*): Provided that no appeal by a creditor shall be competent unless the note of appeal be lodged within fifteen days of the date of notification in the Gazette. Sect. 131, 132, 133.

(*a*) 1. Unless the dividend is accelerated or altered (s. 133 and 135).
2. As to computation of time, *vide* s. 5.

(*b*) *Vide* s. 125.

(*c*) It is not expressely set forth that the trustee is to adjudicate on new claims, but this is plainly meant from the fact that appeals are allowed, and may be held as included in the clause "all as is herein-before provided with respect to the first dividend." (*Vide* s. 126)

CXXXI. On the first lawful day after the expiration of ten months (*a*) from the date of the deliverance actually awarding sequestration, the trustee shall make payment of the second dividend to those creditors who are entitled thereto, and shall lodge the dividend disputed or not then payable, all as is herein-before provided with respect to the first dividend (*b*). Dividend to be paid.

(*a*) As to computation of time, *vide* s. 5.

(*b*) *Vide* s. 129.

CXXXII. The like procedure (*a*) shall be followed out as to subsequent dividends at similar intervals of time thereafter (*b*), in order that a dividend may be made on the first lawful day after the expiration of every three months from the day of payment of the immediately preceding dividend, until the whole funds of the bankrupt shall be divided (*c*). *Subsequent Dividends.* Same proceedings as in prior dividends.

(*a*) *i. e.*, the procedure prescribed in reference to the second dividend. (Act 1857, s. 6.)

(*b*) Unless the dividend is accelerated or altered (s. 133 and 135). As to the third and subsequent dividends, the trustee will thus require to begin his preparations for them on the expiry of a month after payment of the immediately preceding dividend. And prior to that date the new claims will require to be lodged. (Act 1857, s. 5.)

(*c*) Or until the whole debts, interest, and expenses are paid (s. 155).

CXXXIII. After the second dividend is made, a majority (*a*) of the creditors (*b*), at any general meeting called for the purpose (*c*), may determine that future dividends shall be made at shorter intervals, and the affairs of the estate brought to a more speedy close; and even before (*d*) the period assigned for the first dividend as aforesaid (*e*), it shall be competent to Dividends may be accelerated in certain cases.

Sect. 134. three-fourths in number (*f*) and value of the creditors present (*g*) at the meeting after the bankrupt's examination, or at any subsequent meeting called for the purpose, to direct the trustee to apply to the Lord Ordinary or the Sheriff for authority to make the first dividend at an earlier period than the expiration of six months from the date of the deliverance actually awarding sequestration, but not earlier than four months from such date, if upon cause shown it shall be found expedient so to do, and also to accelerate the time for making the second and other dividends; and when the Lord Ordinary or the Sheriff shall, upon such application, accelerate the first or any subsequent dividend, which he is hereby empowered to do (*h*), he shall also make the requisite provision for the acceleration of any other matters which he may find it necessary to accelerate in consequence thereof.

(*a*) A majority in value (s. 101).

(*b*) Qualified creditors (s. 49, note *b*).

(*c*) As to calling meetings, *vide* s. 98 and 99.

(*d*) *Vide Wighton*, 20th Dec. 1865, as to power of the Court to accelerate *afterwards*.

(*e*) *Vide* s. 129.

(*f*) As to computing creditors in number, *vide* s. 145, note *b*; also *vide* s. 101 as to creditors under £20.

(*g*) Whether voting or not (s. 101, note *b*).

(*h*) 1. Notice in some shape should be given to the creditors. (*Vide* s. 123, note *e*, as to this.)

2. The Court will keep in view the interests of creditors abroad (s. 124).

3. The word "Sheriff" includes "Sheriff-Substitute" (s. 4; *vide* s. 170, note *e*).

Proceedings when commissioners postpone the dividend.

CXXXIV. If it shall appear to the commissioners (*a*) that a dividend ought to be postponed, they may do so till the recurrence of another stated period for making a dividend (*b*), and they shall authorise the trustee to give a notice to that effect in the next Gazette (*c*).

(*a*) 1. A majority is a quorum (s. 4.)

2. The commissioners are entitled to consider any claims of which they may have heard, or are in contemplation though not lodged, in deciding as to a postponement of dividends. (*Steele*, 2d March 1865.)

(*b*) 1. *Vide* s. 130 and 132. Their deliverance is appealable under s. 169. (*Steele, supra.*)

2. Where the commissioners had postponed the first dividend till next statutory period, the Court afterwards declined to accelerate that dividend. (*Wighton*, 20th Dec. 1865.)

(*c*) 'Edinburgh Gazette' (s. 4).

CXXXV. In cases where the sequestrated estate consists chiefly of land, and in any other cases where it may be necessary, it shall be competent for the Court of Session or the Lord Ordinary or Sheriff, on a special application by the trustee and commissioners (*a*), to authorise such alteration in the periods above mentioned for payment of dividends as shall be found most suitable to the circumstances of the case (*b*). Sect. 135, 136. Where estate is chiefly land, periods of payment may be altered.

(*a*) A majority is a quorum (s. 4).

(*b*) *Vide* s. 123, note *e*, as to notice to creditors.

CXXXVI. If on the lapse of twelve months (*a*) from the date of the deliverance actually awarding sequestration it shall appear to the trustee and commissioners (*b*) expedient to sell the heritable or moveable estates not disposed of, and any interest which the creditors have in the outstanding debts and consigned dividends (*c*), they shall fix a day for holding a meeting of the creditors to take the same into consideration; and the trustee, besides advertising the same in the Gazette (*d*), shall, fourteen days before the day appointed, send by post to each creditor (*e*) claiming on the estate a notice of the time and place of the meeting, with a valuation of the estates and of the outstanding debts and the consigned dividends; and if three-fourths in value of the creditors assembled (*f*) at the meeting shall decide in favour of a sale (*g*) in whole or in lots, the trustee shall cause the estates, debts, and dividends to be sold by auction (*h*), after notice thereof published at least one month previous to the sale, once in the Gazette, and in such other newspapers as the creditors at the meeting shall appoint. Winding up of estate.

(*a*) As to computation of time, *vide* s. 5.

(*b*) A majority is a quorum (s. 4).

(*c*) This applies to dividends mentioned in s. 129—not those in s. 153.

(*d*) Seven days' notice is necessary (s. 99). The "Gazette" is the 'Edinburgh Gazette' (s. 4).

(*e*) As to creditors under £20, *vide* s. 100.

(*f*) *Vide* s. 101 and notes.

(*g*) The bankrupt has an interest to oppose a sale if there be anything flagrant or illegal in the procedure, and with that view it is competent for him to apply for suspension and interdict. (*Pentland*, 3d July 1827.)

(*h*) As to mode of sale of estate generally, *vide* s. 82, note *b*.

SECT. 137. *Discharge of Bankrupt.*

1ST. ON COMPOSITION.

Offer of composition may be made at the meeting for election of trustee.

CXXXVII. At the meeting for election of trustee the bankrupt or his friends, or, in case of his decease, his successors (*a*), and in case of a company, one or more of the partners thereof (*b*), may offer a composition (*c*) to the creditors on the whole debts (*d*), with security for payment of the same (*e*); and if the majority of the creditors (*f*) in number (*g*) and nine-tenths in value present (*h*) at such meeting shall resolve that the offer and security shall be entertained (*i*) for consideration, the trustee shall forthwith advertise in the Gazette (*j*) a notice that an offer of composition has been so made and entertained, and that it will be decided upon at the meeting to be held after the examination of the bankrupt, and shall specify the hour, day, and place, and also transmit by post letters to each of the creditors claiming on the estate, or mentioned in the bankrupt's state of affairs, containing a notice of such resolution, and of the day and hour at which, and the place where, such meeting is to be held, and specifying the offer and security proposed, and giving an abstract of the state of the affairs and of the valuation of the estate, so far as the same can be done, to enable the creditors to judge of such offer and security (*k*).

N. B.—*The enactments in the old Statutes on this subject are so far the same as the above section that the following cases apply.*

(*a*) As to interpretation of "successors," *vide* s. 4.

(*b*) 1. An offer was sustained and a discharge granted to one partner, and *quoad* the others the sequestration was allowed to go on. (*Grant*, 21st Dec. 1811, F. C.)

2. In another case all the partners were discharged, but the sequestration was continued as to the company's assets. (*Smith*, 15th Feb. 1827.)

3. The partner may of course stipulate that he get the company's assets (s. 140, note *n*).

4. In the case of two companies with different partners carrying on business under same firm, but in different trades, held incompetent, in considering offers of composition, for a majority of creditors on the two estates to resolve that the creditors on each estate shall rank on the other. (*M'Laren*, 26th June 1869.)

(*c*) 1. An offer of a sum certain, and a farther composition if the bankrupt succeeded in a law-plea, was held good. (*M'Funn*, 11th July 1811, F. C.)

2. If a challenge of preferences is intended, it should be stated in the offer (s. 140, note *o*; s. 143).

(*d*) 1. Where the bankrupt was bound to pay the interest of a heritable debt so long as it was unpaid: Decree granted for the composition on interest past due, and on interests to become due, the latter being first come and bygone,

aye, and until the subjects were sold; but recalled the interlocutor of the Lord Ordinary ordering the value of the interests to be capitalised when the sale was effected, and a composition to be then paid on the capital value, and superseded consideration thereof *hoc statu*. (*Murray*, 3d March 1836.) SECT. 138.

2. The creditor is entitled to the composition on his full debt, although he holds the security of certain bills endorsed to him by the bankrupt, and even although he has received payment of those bills after the sequestration, but not so as to receive more than 20s. per pound. (*Black*, 29th Feb. 1840.)

3. *Vide* s. 140, note *p*.

(*e*) 1. There must be security, otherwise the Court will not approve. (*M'Minn*, 10th July 1804, 13 F. C. 395.)

2. There may be one cautioner for the whole, and other cautioners for different parts of the composition. (*Inglis*, 23d May 1811, 2 B. C. 461; *Gray*, 7th March 1812, 2 B. C. 761.)

3. Security for one-half of the composition will not do. (*Livingston*, 6th June 1811, 2 B. C. 460.)

4. Where cautioners were not bound *in solidum*, but each for a separate sum, the Court would not approve. (*Handyside*, 26th June 1811, F. C.)

5. Where it was a part of a composition-arrangement that a sum of money was to be placed in the trustee's hands for the general behoof of the creditors, held that he was not entitled to pay the same to the creditors, *primo venienti*, but equally, according to their debts. (*Aitken*, 8th July 1845.)

6. A minor will not be received as cautioner. (*Brown*, July 1820, 2 B. C. 461.)

7. Consignation with the trustee of the composition due to the creditors ranked was held not enough. (*M'Vicar*, 28th Nov. 1829.)

8. In addition to a cautioner for the whole composition, it is competent for the creditors to stipulate for security over any subject, whether belonging to the bankrupt or another, and to have it vested in trustees prior to the discharge (*vide* 2 B. C. 461; *Adam*, 17th Jan. 1845); and an assignation by the trustee and commissioners, with consent of the bankrupt prior to discharge, does not require intimation to complete it (*Adam*, *supra*).

(*f*) Qualified creditors (s. 49, note *b*, and par. 294, &c.)

(*g*) As to creditors under £20, *vide* s. 101.

(*h*) Whether voting or not. (*Vide* s. 101, and notes.)

(*i*) Though a creditor agreed to entertain an offer, this did not prevent him from incarcerating the bankrupt. (*Neilson*, 2d Feb. 1843.)

(*j*) The "Gazette" is the 'Edinburgh Gazette' (s. 4).

(*k*) 1. Opinion of the Court that it will invalidate a composition-contract if the creditors are "not fully and properly informed, but, on the contrary, practically misled as to the state of affairs and valuation of the estate, so as to be led to form an erroneous view of their own interests in regard to the offer of composition." (*Miln*, 19th June 1845.)

2. Notice of intended challenges of preferences should also be sent. (*Vide* s. 140, note *o*; also s. 143.)

CXXXVIII. If at the meeting held after the examination of the bankrupt a majority in number (*a*) and nine-tenths in value of the creditors (*b*) there assembled (*c*) shall accept such offer (*d*) and security, a bond of caution (*e*) for payment of the Offer, if entertained, to be disposed of at the meet-

SECT. 138. ing after the bankrupt's examination.

Lord Ordinary or Sheriff to approve.

composition, executed by the bankrupt or his successors, or the partners of a company (as the case may be), and the proposed cautioner, shall be forthwith (*f*) lodged in the hands of the trustee; and the trustee shall thereupon subscribe and transmit a report (*g*) of the resolution of the meeting, with the said bond, to the Bill Chamber Clerk or Sheriff Clerk, in order that the approval of the Lord Ordinary or Sheriff (*h*) (whichever may be selected by the trustee) may be obtained thereto; and if the Lord Ordinary or the Sheriff, after hearing any objections by creditors (*i*), shall find that the offer, with the security, has been duly made, and is reasonable (*j*), and has been assented to by a majority in number and nine-tenths in value of all the creditors assembled at the said meeting, he shall pronounce a deliverance approving thereof (*k*): Provided that he shall hear any objection by opposing creditors; and if he shall refuse to sustain the offer or reject the vote of any creditor, he shall specify the grounds of refusal or rejection.

N.B.—*The old Statutes on this subject are so far the same as the above section that the undernoted cases apply.*

(*a*) *Vide* s. 101 as to creditors under £20.

(*b*) Qualified creditors (s. 49, note *b*, and par. 294, &c.)

(*c*) Whether voting or not (s. 101, and notes).

(*d*) No alteration must be made in the offer (*Milne*, 19th June 1845). In this case the alteration was that, in addition to the cautioner proposed at the first meeting, the creditors were to have the security of the funds of the bankrupt estate, which were to remain in the hands of the trustee, and be paid to the creditors *primo venienti* when the first instalment fell due in payment of that instalment. (*Vide M'Intosh*, 11th July 1846, 18 Jur. 559.)

(*e*) 1. Though the bond is for a composition on the debts generally, it warrants a horning for the composition on a particular debt ranked. (*Brown*, 11th Feb. 1809, F. C.)

2. A decree arbitral pronounced in a submission between the creditor and bankrupt after his discharge, held, with the bond, to be a sufficient warrant for a horning against the cautioners, although the creditor had not ranked in the sequestration. (*Smith*, 13th June 1828.)

3. A certificate by the trustee of the amount of ranking, together with an extract of the bond, are grounds for letters of horning. (*Atkinson*, 22d Feb. 1833.)

4. A certificate that the creditor was given up in the bankrupt's state of affairs, or admitted without question to be reckoned in the acceptance, would answer the same purpose. (*Vide* s. 143.)

5. Question raised whether the cautioners may withdraw on change of circumstances after the bond is lodged, and before the offer is approved of (*Ironside*, 26th March 1841, 4 D. 629). The change of circumstances was that the bankrupt had meantime been apprehended on a charge of fraudulent bankruptcy; but the point was not decided, as the bankrupt gave in a minute withdrawing the offer, whereupon the Sheriff refused to approve, and the

Lord Ordinary adhered, and his judgment was acquiesced in. (*Vide* 2 B. C. 469.)

SECT. 139.

(*f*) A delay of seven months in lodging the bond having taken place, held that the offer had fallen. (*Robertson*, 12th Dec. 1850; *vide Brown*, 17th June 1846.)

(*g*) 1. The bankrupt may get a decree to compel the trustee to report. (*Kemp*, 28th Feb. 1832.)

2. Where a trustee became insane after the report was prepared, but was unsigned, the Court allowed the commissioners to sign it, and then approved. (*Guthrie*, 21st May 1845.)

(*h*) 1. It was held no objection under this clause in 54 Geo. III. c. 137, s. 59, that the approval was not asked for four years. (*Reid*, 7th March 1823.)

2. The word "Sheriff" includes "Sheriff-Substitute" (s. 4; *vide* s. 170, note *e*.)

(*i*) 1. Where a litigation was carried on by a bankrupt in his trustee's name to prevent a creditor from appearing and opposing his composition-settlement, the trustee was reprimanded by the Court. (*Urquhart*, 22d May 1855.)

2. Opinion that, although a creditor has at the meeting assented to the offer, he may nevertheless, on cause shown, appear and oppose it before the Court. (*Brown*, 17th June 1846; *vide* s. 146, note *d*.)

3. Bankrupt has a right to challenge the title of a compearing creditor who objects to his discharge (*Campbell*, 11th March 1856). This occurred under s. 116 of 2 & 3 Vict. c. 41, which is the same on this point as the above section.

4. Also held that the objecting creditor may prove his debt so as to entitle him to insist in his objection, but not necessary that his claim should have been ranked for a dividend. (*Campbell, supra.*)

(*j*) 1. The want of proper business books may prevent the Court from ascertaining that the offer is reasonable. (*Arnot*, 11th July 1834.)

2. Held that an offer containing two conditions—viz., that the bankrupt should have personal protection, and that no further expense should be incurred in the sequestration—was not reasonable and duly made. (*Latta*, 4th July 1862.)

(*k*) If this deliverance is not appealed, it cannot be opened up in an appeal against deliverance (s. 140) granting discharge. (*Scottish Provident Assurance Company*, 27th Jan. 1859.)

CXXXIX. In like manner, at the meeting held after the examination of the bankrupt, or at any subsequent meeting called for the purpose by the trustee (*a*), with the consent of the commissioners (*b*), the bankrupt, or his friends, or in case of his decease his successors, or any of them, and in the case of a company one or more of the partners thereof, may offer a composition to the creditors on the whole debts, with security for payment of the same; and if a majority in number and four-fifths in value of the creditors present (*c*) shall resolve that the offer and security shall be entertained for consideration, the trustee shall call another meeting to be held at a

Offer of composition may also be made at meeting after bankrupt's examination.

SECT. 140. specified hour on a specified day, being not less than twenty-one days thereafter (*d*), and at a specified place, and shall, seven days at least before such other meeting, send by post letters addressed to each of the creditors who have claimed on the estate or are mentioned in the bankrupt's state of affairs, which letter shall contain a notice of such resolution, and of the hour, day, and place, and purpose of the meeting, and specify the offer and security proposed, and give an abstract of the state of the affairs and valuation of the estate, so far as can be done, to enable the creditors to judge of such offer; and if at the meeting so called a majority in number and four-fifths in value of the creditors present shall accept the said offer and security, a bond of caution shall be lodged and a report made, and a deliverance pronounced, all in the same manner and to the same effect as is herein-before provided (*e*).

(*a*) *Vide* s. 99 as to mode of calling meeting.

(*b*) A majority is a quorum (s. 4).

(*c*) *Vide* s. 101, and notes.

(*d*) As to computation of time, *vide* s. 5.

(*e*) The notes to s. 137 and 138 apply to the above section.

Bankrupt on making declaration or oath to obtain his discharge.

CXL. On such deliverance being pronounced, approving of the composition in either of the cases above specified, the bankrupt (*a*), or if deceased his successor or other party offering the composition, shall make a declaration, or if required by the trustee or any creditor (*b*), an oath (*c*), before the Lord Ordinary or the Sheriff (as the case may be), that he has made a full and fair surrender of his estate (*d*), and has not granted or promised any preference or security (*e*), or made or promised any payment, or entered into any secret or collusive agreement or transaction, to obtain the concurrence of any creditor to such offer and security (*f*); and if the bankrupt shall be at the time beyond the jurisdiction of the Lord Ordinary or Sheriff, or is by a lawful cause prevented from appearing before the Lord Ordinary or Sheriff, commission may be granted to any fit person to take such declaration or oath (*g*); and the Lord Ordinary or the Sheriff (as the case may be), on being satisfied with such oath or declaration, shall (*h*) pronounce a deliverance (*i*) discharging (*j*) the bankrupt (*k*) of all debts and obligations contracted by him (*l*), or for which he was liable at the date of the sequestration (*m*), and shall declare the sequestration to be at an end, and the bankrupt (*n*) reinvested in his estate (*o*) (reserving always the claims of the creditors (*p*) for the said composition against

him and the cautioner); and the bond of caution shall be recorded in the books of the Court of Session, or, when such deliverance is pronounced by the Sheriff, in the books of the Sheriff Court; and an extract (*q*) of such deliverance, signed by the Clerk of the Bills or the Sheriff Clerk, shall forthwith (*r*) be transmitted to the accountant, who shall preserve the same, with the copy of the proceedings in the sequestration transmitted to him, as herein provided; and the Clerk of the Bills or the Sheriff Clerk shall also issue an abbreviate of such deliverance in the form of Schedule (.) hereto annexed (*s*), which abbreviate shall be recorded in the Register of Inhibitions and the Register of Abbreviates of Adjudications at Edinburgh, and the keepers of the said registers, if required, shall grant certificates of such registration in the form of Schedule (.) hereto annexed; and such deliverance of the Lord Ordinary or of the Sheriff shall operate as a complete discharge and acquittance to the bankrupt in terms thereof, and shall receive effect within Great Britain and Ireland and her Majesty's other dominions, and an entry thereof shall be made by the accountant in the Register of Sequestrations. SECT. 140.

N.B.—*The old Statutes on the above subject are so far similar to the above section as to make the undernoted cases apply.*

(*a*) 1. Where bankrupt was insane, his son, who acted for him in his business, took the oath. (*Paterson*, 2d Dec. 1813, 2 B. C. 453.)

2. Where the bankrupt died, his widow *qua* executrix made the declaration. (*Keillar*, 14th Feb. 1842.)

(*b*) A qualified creditor (s. 49, note *b*. and par. 294, &c.)

(*c*) Or affirmation. (18 Vict. c. 25, s. 1; *vide* s. 21, note *g*.)

(*d*) 1. A discharge reduced at the instance of a creditor on the ground of fraud, where the bankrupt allowed said creditor to claim and vote on a certain debt, and did not give up in his state of affairs a counter-claim which he had against the creditor, and which he proceeded to enforce against him after he was reinvested. (*Baillie*, 23d March 1837.)

2. Where a discharge reduced on the ground of fraud *quoad* one of the creditors, held entitled to decree for his debt under deduction of a counter-claim and of the composition he had meantime received. (*Bailie*, 22d Dec. 1837.)

3. A summons of reduction of a composition-contract on the ground of fraudulent bankruptcy and perjury, dismissed as not libelled with sufficient precision. (*Stewart*, 21st June 1836.)

(*e*) As to preferences or securities, &c., *vide* s. 150, and notes.

(*f*) The discharge, if granted, may be annulled (s. 151).

(*g*) *Vide* s. 90, note *i*, as to qualified commissioners. *Vide* s. 147, note *a*, as to taking oath to lie *in retentis*.

(*h*) 1. It is no objection to the discharge that two creditors are applying for recall of the sequestration—caution being given that they shall not be prejudiced by it (*Annan*, 9th March 1848). This occurred under s. 21 and 114

SECT. 140. of 2 & 3 Vict. c. 41, which on this point are the same as s. 33 and 138 of this Act.

2. The expenses of sequestration and trustee's remuneration must first be paid or provided for (s. 141).

3. The word "Sheriff" includes "Sheriff-Substitute" (s. 4; *vide* s. 170, note *e*).

(*i*) A creditor may appeal against this deliverance, although he did not appear and object before it was pronounced. (*Scottish Provident Assurance Company*, 27th Jan. 1859.)

(*j*) A debt may be revived after discharge by a new document, provided the transaction is not the result of an illegal arrangement prior to the discharge, whereby a preference was promised or secured to the creditor for his concurrence. (*Hunter*, 31st Jan. 1835; *Grimshaw*, 4th June 1842; *Roy*, 18th June 1831.)

(*k*) 1. A discharge to a company held to be no discharge to the partners as individuals. (*Mellice*, 22d June 1815.)

2. A discharge to J. L. & Co., and J. L. as an individual, held to be no discharge to J. L. of a bill signed by him as J. L. & Son. (*Lindsay*, 20th Jan. 1844.)

3. However, it is not the practice now to discharge a company, but only the partners. (*Steele*, 14th Nov. 1855.)

4. As to discharge of Crown debtors, *vide* s. 148.

(*l*) 1. The future aliment of an illegitimate child is not discharged. (*Marjoribanks*, 30th Nov. 1831.)

2. The discharge held to apply to a decree against the bankrupt obtained since the sequestration, the debt being due before it. (*Walker*, 14th May 1835.)

3. The discharge does not affect the creditor's right to hold and realise his securities. (2 B. C. 476.)

4. The creditor is farther entitled to his full composition independent of securities, but only to the extent of getting 20s. per pound (s. 137, note *d*).

(*m*) 1. The discharge will not free the bankrupt of the costs in a suit incurred *before* sequestration, where he has continued the suit *after* sequestration. (*Jackson*, 22d Nov. 1862.)

2. The deliverance ought to be in the exact words of the Statute. Where a bankrupt was discharged under 54 Geo. III. c. 137, "upon" payment of the composition, while the Act, s. 59, provided that he was to be discharged, "except as to the payment of the composition," held that the discharge must be interpreted according to terms of the Statute. (*Saunders*, 10th March 1827.)

(*n*) 1. If a partner of a company make the offer on condition of getting the company's assets, it would appear that the discharge declaring the sequestration at an end, and the partner invested in the company's estates, is a sufficient title to the estates without an assignation (*Shand & Co.*, 25th Nov. 1848.) It is, however, customary to take a conveyance from the trustee.

2. In *Robertson's Trustee*, 9th Feb. 1842, the Court likewise discharged the representatives and the estate, and declared the sequestration at an end, "and for all obstacle that the sequestration might otherwise have opposed, declares the representatives of the bankrupt entitled *omni habili modo* to take up and obtain themselves invested in the bankrupt estate, and until this be

done, declines confirming the deliverance of the Sheriff." In this case the bankrupt died after acceptance of the offer, and before pronouncing as above a notice in the Gazette was given to the creditors that they might appear and object.

3. Where bankrupt died, the representatives discharged, but not reinvested. (*Keillar*, 14th Feb. 1842; *vide Robertson*, 23d June 1836.)

(*o*) 1. If the bankrupt is to acquire the right vested in the creditors to challenge preferences, it must be stipulated for (*Slade*, 23d May 1806), and an assignation procured (*M'Fee*, June 1809, 2 B. C. 458), and also notice given to the creditors of the intended challenge (*Bryce*, 20th Feb. 1818, F. C.) This was decided under 54 Geo. III. c. 137, s. 58, which does not make such intimation a statutory requisite. *Vide Drummond*, 29th Jan. 1850; *vide* also s. 143, which prohibits the bankrupt and his cautioner from objecting upon any ground whatever to securities held by creditors unless notice is given.

2. As to reinvestiture in debts not contained in state of affairs, *vide* s. 81, note *a*.

(*p*) 1. This applies to the whole creditors, whether they have made a claim before the discharge or not. (*Ferguson*, 16th Nov. 1836; but *vide* s. 144.)

2. Failure to pay the composition does not revive the sequestration (*Baird*, 23d May 1818; 2 B. C. 474); nor does it revive the debt (*Saunders*, 10th March 1827; *Brown*, 7th March 1828). It is usually different in the case of extrajudicial composition settlements (*Paul*, 19th Dec. 1820). If, however, the discharge is absolute, the debt even in that case would not revive (2 B. C. 473).

(*q*) An extract of the discharge will not prevent an appeal if the appeal days are not expired. (*Samson*, 29th June 1849.)

(*r*) The enactment that an extract shall forthwith be transmitted to the accountant seems to be merely directory. The deliverance of the Lord Ordinary or Sheriff is of itself a discharge. Under the late Statute, the transmission was to be made forthwith to the Lord Ordinary for confirmation, and it was the *confirmed* deliverance which was a discharge (2 & 3 Vict. c. 41, s. 116). Under that section a delay in one case of two years, and seven years in another, held to be fatal (*Stephen*, 19th Nov. 1853; *Campbell*, 9th Feb. 1854).

(*s*) For schedules, *vide* Act 1857, s. 7, *postea*.

Trustee's accounts to be audited before the composition be approved of.

CXLI. Before (*a*) the Lord Ordinary or the Sheriff shall pronounce the deliverance approving of the composition, the commissioners (*b*) shall audit the accounts of the trustee, and ascertain the balance due to or by him, and fix the remuneration for his trouble (*c*), subject to the review (*d*) of the Lord Ordinary or the Sheriff, if complained of by the trustee, the bankrupt, or any of the creditors (*e*); and the expense attending the sequestration and such remuneration shall be paid or provided for to the satisfaction of the trustee and commissioners before such deliverance is pronounced (*f*).

(*a*) The commissioners have no power, after composition is approved of, to fix the trustee's commission. (*Brownlee*, 3d Feb. 1831.)

(*b*) A majority is a quorum (s. 4).

SECT. 142, 143.

(*c*) As to fixing commission prior to dividend, *vide* s. 125.

(*d*) 1. As to time and mode of appeal, *vide* s. 169 and 170.

2. The appeal falls, if the bankrupt proceeds and obtains his discharge. (*Clark*, 4th March 1843; *Franklin*, 5th Dec. 1840.)

(*e*) Qualified creditors (s. 49, note *b*, and par. 294, &c.)

(*f*) Where a trustee had resigned, and a new one elected, held that the former trustee had a title to appeal, and to have his accounts audited in terms of Act. (*Miller*, 30th Nov. 1872.)

Sequestration to go on, notwithstanding offer of composition.

CXLII. Notwithstanding such offer of composition and proceeding consequent thereon the sequestration shall continue, and the trustee shall proceed in the execution of his duty as if no such offer had been made, until the deliverance by the Lord Ordinary or the Sheriff be pronounced, when the sequestration shall cease and be at an end, and the trustee be exonered and discharged (*a*): Provided, nevertheless, that the trustee and his cautioner shall be liable, on petition to the Lord Ordinary or Sheriff (*b*) by the bankrupt or his cautioner for the composition, to account for his intromissions and other acts as trustee (*c*).

(*a*) 1. Where the trustee under these clauses in 2 & 3 Vict. c. 41, s. 117 and 118, applied for exoneration and delivery of his bond, the Lord Ordinary was held entitled to grant it (*Hepburn*, 14th Feb. 1842). The bankrupt and the commissioners concurred in the application, and on the Lord Ordinary reporting the matter to the Court, the latter was of opinion that in respect of such consent, and of no balance appearing to be due by the trustee, the petition ought to be granted. Afterwards the cautioner for the composition likewise concurred, and the application was granted. It may be observed that s. 152 only provides for the trustee's discharge after the funds have been divided.

2. It is the practice in Lanarkshire to grant such applications on evidence that the trustee has accounted to the bankrupt and his cautioner, and transmitted the sederunt-book to the accountant.

(*b*) The word "Sheriff" includes "Sheriff-Substitute" (s. 4; *vide* s. 170, note *e*).

(*c*) 1. As to reconciling this process for accounting with the audit of the commissioners in s. 141, see opinion of Court in *Burns*, 4th Feb. 1869.

2. An ordinary action of count and reckoning held incompetent. (*Burns*, *supra*.)

Bankrupt and cautioner not to be entitled to object to certain debts.

CXLIII. Neither the bankrupt nor his successor offering the composition, nor the cautioner for the composition, shall be entitled to object to any debt which the bankrupt has given up in the state of his affairs as due by him, or admitted without question to be reckoned in the acceptance of the offer of composition, nor to object to any security (*a*) held by any creditor, unless in the offer of composition such debt or security shall be stated as objected to, and notice in writing given to the creditor in right thereof (*b*).

(*a*) *Vide* s. 140, note *o*.

SECT. 144, 145.

(*b*) 1. The bankrupt not even allowed to show by the creditor's oath that the debt was not due. (*Gordon*, 19th Jan. 1828.)

2. Where the debt was allowed without question to be reckoned in the acceptance of the offer, a challenge not allowed, although in the trustee's report (s. 138) an objection was stated, but of which no notice was given to the creditor. (*Adam*, 24th Dec. 1842.)

3. An objection was not allowed although it was only discovered after the offer was accepted (*Morrison*, 16th Feb. 1849 ; *Dickson*, 27th May 1828), even at the instance of the cautioner.

4. The cautioner cannot object to a claim lodged the day before the meeting accepting the offer, and admitted without objection to be reckoned in the acceptance of it. (*Halley*, 23d May 1861 ; *vide Black*, 15th Dec. 1859.)

Claims against cautioner limited in certain cases to two years.

CXLIV. No person who has not produced an oath as a creditor before the date of the deliverance approving of the composition, shall be entitled to make any demand against the cautioner after the space of two years from the date of such deliverance, reserving to such creditor his claim for the composition against the bankrupt and his estate.

If offer of composition rejected, no other to be entertained, unless nine-tenths of creditors ranked shall agree.

CXLV. If an offer of composition have been made and rejected, or have become ineffectual (*a*), no other offer of composition shall be entertained unless nine-tenths in number (*b*) and value of all the creditors ranked (*c*) or entitled to be ranked (*d*) on the estate shall assent in writing to such offer (*e*), which offer shall state the amount of composition and the terms of payment, and be subscribed by the cautioner proposed, in which case a meeting shall be called in manner before directed (*f*) by the trustee for finally disposing of the same ; and if at the meeting so called a majority in number and nine-tenths in value of the creditors (*g*) present (*h*) shall accept such offer and security, and the same shall be assented to by nine-tenths in value of all the creditors who have produced oaths as aforesaid (*i*), a bond of caution shall be lodged and a report made, and deliverances pronounced, and the other proceedings shall take place and have effect in the same manner as is herein-before provided for other offers of composition.

(*a*) Where, after an offer was made and entertained, the bankrupt delayed for six months, and ultimately refused, by letter to the trustee, to subscribe the bond for the composition, and a meeting was called to consider what was to be done in consequence of this refusal, at which meeting the bankrupt proposed to implement his offer, which was agreed to, held, nevertheless, that the offer had become ineffectual. (*Brown*, 17th June 1846.)

(*b*) Cases have occurred where there were fewer creditors than ten, and hence there could not be the concurrence of the statutory majority of nine-tenths in number, as required by such sections as the above, unless the creditors were unanimous. In such cases, and in all cases where there must be a

SECT. 146. fraction in the computation, as where there are twenty-one creditors and a majority of four-fifths is required, the question that arises is, whether, in order to satisfy the Statute, it is necessary to have more than the statutory majority so as to have enough, or whether the nearest possible approximation to the statutory majority is sufficient compliance with the Statute. The Court seems to have adopted the latter principle. Under the old Statutes the bankrupt required the concurrence of a majority of nine-tenths in number in order to carry a composition, but the concurrence of eight was held enough where there were only nine creditors (*Smith*, 14th Nov. 1812; *Buchanan*, 8th Dec. 1829), and seven where there were only eight (*Maxwell*, 14th Feb. 1807, 2 B. C. 463); but not two where there were only three (*Brown*, 10th July 1817, 2 B. C. 463). It is not decided whether this principle applies to all cases of voting by the creditors. It seems quite applicable to cases of voting on offers of composition. As to creditors under £20, *vide* s. 101.

(*c*) In terms of s. 126 and 130.

(*d*) *Vide* s. 49, note *b*.

(*e*) 1. It is usual to instruct the fact of consent by a certificate from the trustee. (*Ireland*, 20th Dec. 1834.)

2. As to neutral creditors, *vide* s. 147, note *d*.

(*f*) *Vide* s. 137 and 139 as to manner of calling the meeting.

(*g*) Qualified creditors (s. 49, note *b*).

(*h*) *Vide* s. 101, note *b*.

(*i*) This phrase, "nine-tenths in value of all the creditors who have produced oaths as aforesaid," plainly refers to the phrase near the beginning of the section, "nine-tenths in number and value of all the creditors ranked or entitled to be ranked," although both in sense and expression they differ to some extent. Of course the latter, as a part of the leading clause, will prevail.

2D. WITHOUT COMPOSITION.

Proceedings for this purpose.

May be discharged with consent of creditors.

CXLVI. The bankrupt (*a*) may at any time after the meeting held after his examination petition the Lord Ordinary or the Sheriff (*b*) to be finally discharged of all debts contracted by him before the date of the sequestration, provided that every creditor who has produced his oath (*c*) as aforesaid shall concur (*d*) in the petition; and the bankrupt may also present such petition on the expiration of six months from the date of the deliverance actually awarding sequestration, provided a majority in number (*e*) and four-fifths in value of the creditors who have produced oaths concur in the petition; and the bankrupt may also present such petition on the expiration of twelve months from the date of the deliverance actually awarding sequestration, provided a majority in number and two-thirds in value of the creditors concur in the petition; and the bankrupt may also present such petition on the expiration of eighteen months from the date of the deliverance actually awarding sequestration, provided a majority in number and value concur in the petition; and the bankrupt may

Sect. 146. After two years may be discharged without consent.

also present such petition on the expiration of two years from the date of the deliverance actually awarding sequestration without any consents of creditors; and the Lord Ordinary or the Sheriff, as the case may be, shall in each of the cases aforesaid order the petition to be intimated in the Gazette and to each creditor (*f*); and if, at the distance of not less than twenty-one days (*g*) from the publication of such intimation, and on evidence (*h*) being produced of concurrence as aforesaid, where such concurrence is required, there be no appearance (*i*) to oppose the same, the Lord Ordinary or the Sheriff, as the case may be, shall pronounce a deliverance finding the bankrupt entitled to a discharge; but if appearance be made by any of the creditors or by the trustee, the Lord Ordinary or the Sheriff, as the case may be, shall judge of any objections against granting the discharge, and shall either find the bankrupt entitled to his discharge, or refuse the discharge (*j*), or defer the consideration of the same for such period as he may think proper, and may annex such conditions thereto as the justice of the case may require (*k*): Provided that no discharge shall be granted to the bankrupt where under the provisions of this Act he is only entitled to apply for a decree of cessio; and provided also, that it shall not be competent for the bankrupt to present a petition for his discharge, or to obtain any consent of any creditor to such discharge, until the trustee shall have prepared a report with regard to the conduct of the bankrupt, and as to how far he has complied with the provisions of this Act, and, in particular, whether the bankrupt has made a fair discovery and surrender of his estate, and whether he has attended the diets of examination, and whether he has been guilty of any collusion, and whether his bankruptcy has arisen from innocent misfortunes or losses in business, or from culpable or undue conduct (*l*); and such report may be prepared by the trustee, upon the requisition of the bankrupt, at any time after the bankrupt's examination, but shall not be demandable from the trustee till the expiration of five months from the date of the deliverance actually awarding sequestration; and such report shall be produced in the proceedings for the bankrupt's discharge, and shall be referred to by its date, or by other direct reference, in any consent (*m*) to his discharge.

(*a*) One partner of a company may apply for discharge, although the company and the other partner remain under sequestration. (*How*, 14th Dec. 1833.)

(*b*) 1. A bankrupt may apply for discharge without composition, though a petition for discharge on a composition is pending. (*Finlay*, 15th May 1832, 7 F. C. 396.)

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2. If the requisite concurrence is not got before raising the petition, the defect cannot be cured. (*Gilfillan*, 26th Nov. 1836.)

3. The term "Sheriff" includes "Sheriff-Substitute" (s. 4; *vide* s. 170, note *e*).

(*c*) *Vide* s. 58; also s. 49, note *b*.

(*d*) 1. Mere neutrality is not enough, where the Statute prescribes that a certain majority of the creditors must *concur*. (*Charles*, 12th Dec. 1835.)

2. Where concurrence was given by the creditor, a subsequent assignee was held not entitled to recall it. (*Dunlop*, 5th July 1803, 2 B. C. 445; *Sheriff*, 23d Nov. 1809, 15 F. C. 423.)

3. But circumstances may warrant a recall. (*Megget*, 10th July 1830; *vide Walker*, 14th May 1835, where, after six years' delay, the assignee held not bound by cedent's consent.)

4. Where a recall is to take place, the creditor ought to appear in Court—a letter of recall sent to the trustee is not sufficient (*Reid*, 15th Feb. 1838). *Vide* opinion of Lord Meadowbank to the effect that the creditor cannot recall his consent so as to invalidate the application, but that, notwithstanding such consent, he may appear and oppose the petition (*vide* s. 138, note *i*).

(*e*) *Vide* s. 101 as to creditors under £20; also *vide* s. 145, note *b*, as to computing majorities.

(*f*) This applies to every creditor, whether they have claimed or not. They cannot act until an oath is lodged. (*Vide* s. 38, note *d*; also s. 49.)

(*g*) As to computation of time, *vide* s. 5.

(*h*) It is customary for the trustee to grant a certificate of the concurrence, but it may be cut down if inaccurate. (*Wylie*, 24th Feb. 1859.)

(*i*) 1. The Court, or Lord Ordinary, or Sheriff, may refuse the application, although the two years have elapsed, and no appearance be made, if it appears from the report of the accountant in bankruptcy, or other sufficient evidence, that the bankrupt has fraudulently concealed any part of his estate or effects, or has wilfully failed to comply with any of the provisions of the Act 1856 (Act 1860, s. 3). Discharge accordingly refused although ten years had elapsed (*Miller*, 16th Nov. 1877).

2. Where certain creditors did not appear at the outset, but after the case had been under appeal to the Court of Session, and had been remitted back to the Sheriff, held that they might oppose the application on the ground of concealment of property, or the like, but not on formal objections to the oaths of the concurring creditors. (*Samson*, 18th July 1851.)

3. Where all the requisites of the Statute had been complied with, including trustee's report and the consent of the creditors who had lodged claims, held that creditors who now appeared for the first time were not entitled to object to discharge. (*Kerr*, 30th June 1865.)

4. But now held that a creditor may oppose, although he had not appeared in the sequestration previously. (*Cant*, 17th Feb. 1868.)

(*j*) 1. The bankrupt being abroad, held no bar to discharge, he having remained in this country so long as required by his creditors. (*Stirling Bank*, 1st March 1803, aff. 27th May 1803, 2 B. C. 447.)

2. Discharge refused *in hoc statu* to a bankrupt who kept no books, whose liabilities were £17,000 and assets were nothing, and who could give no satisfactory account of his alleged losses. (*M'Nellan*, 5th Feb. 1856; *vide Gemmell*, 20th Dec. 1853; *Cooper*, 5th Nov. 1872.)

3. A clergyman refused a discharge *hoc statu*, it appearing that his debts arose from extravagant living, and that he had refused to surrender a sufficient proportion of his stipend. (*Learmonth*, 21st Jan. 1858.)

4. A discharge refused *hoc statu* where the bankrupt's account of an investment was unsatisfactory, although the trustee's report was favourable; and observed that the refusal was not given as a punishment, but to compel the bankrupt to make a more satisfactory explanation. (*Smith*, 16th May 1860.)

5. The fact that there is no estate to yield a dividend is not a ground for refusing discharge. (*Bain*, 21st May 1870.)

(*k*) 1. A bankrupt was held bound to pay the expenses of sequestration as a condition of getting a discharge. (*Napier*, 3d Dec. 1850.)

2. A married man having thirty shillings a-week from his father's estate, but unable to work, refused to give up that provision; held nevertheless entitled to discharge. (*Blackie*, 25th Nov. 1871.)

3. Observed that an interlocutor refusing discharge *in hoc statu* is not in the form prescribed by the Statute. (*Neill*, 20th Dec. 1873.)

(*l*) 1. Where trustee's report was neither favourable nor unfavourable, but simply to the effect that he could not tell "whether the bankrupt was guilty of any collusion," &c., discharge was refused *hoc statu* under 16 & 17 Vict. c. 53, s. 16 (*Campbell*, 14th Feb. 1855). The requisites of the report are the same by this Act as by the Act above cited.

2. It is not enough for the trustee to report that "he believes" the bankrupt has made a fair disclosure, or that "he has done so as far as known to the trustee." (*Dixon*, 30th March 1867.)

(*m*) 1. Of course this consent must be in writing. (*Vide Wylie*, 24th Feb. 1859.)

2. This clause held imperative and not merely directory. (*Scott*, 16th March 1872.)

Bankrupt to make a declaration or oath before obtaining discharge.

CXLVII. If the bankrupt shall be found entitled to his discharge (*a*) he shall make a declaration, or if required by the trustee or any creditor (*b*), an oath (*c*), before the Lord Ordinary or Sheriff, that he has made a full and fair surrender of his estate, and has not granted or promised any preference or security, nor made or promised any payment, nor entered into any secret or collusive agreement or transaction, to obtain the concurrence of any creditor to his discharge; and if the bankrupt shall be at the time beyond the jurisdiction of the Lord Ordinary or Sheriff, or is by lawful cause prevented from coming before the Lord Ordinary or Sheriff, commission may be granted to any fit person to take such declaration or oath; and the Lord Ordinary or the Sheriff, as the case may be, on being satisfied with such declaration or oath, shall pronounce a deliverance discharging the bankrupt of all debts and obligations contracted by him or for which he was liable at the date of the sequestration (*d*); and when the deliverance discharging the bankrupt is pronounced by the Lord Ordinary or Sheriff, an extract thereof, signed by the Clerk of the Bills or the Sheriff Clerk, shall forthwith be transmitted to the

SECT. 148. accountant, who shall preserve the same with the copy of the proceedings in the sequestration transmitted to him, and extracts thereof, signed as aforesaid, shall be transmitted to the keepers of the registers of inhibitions and adjudications at Edinburgh, who shall enter the same in the said register (*c*); and such deliverance by the Lord Ordinary or the Sheriff shall operate as a complete discharge and acquittance to the bankrupt in terms thereof, and shall receive effect within Great Britain and Ireland and all her Majesty's other dominions; and an entry thereof shall be made by the accountant in the register of sequestrations.

(*a*) Where the bankrupt was about to leave the country after his petition was presented, an application to have his oath taken to lie *in retentis*, till intimation in the Gazette, was granted (*Scott*, 2d Dec. 1837). In another case where the bankrupt had come from London to take the oath, and found on arriving here that, from an error in the advertisements, a new course of intimation was necessary, the Court allowed the oath to be taken to lie *in retentis*, "without prejudice to the right of the creditors to object thereto if they shall see cause" (*Spears*, 4th Dec. 1838). These two cases, however, occurred under 54 Geo. III. c. 137, s. 61, where no power was given to the Court to grant commission to have the oath taken when the bankrupt was out of the country, as in the above section.

(*b*) Any qualified creditor (s. 49, note *b*).

(*c*) Or affirmation (s. 21, note *g*).

(*d*) 1. *Vide* s. 140 and notes as to declaration and discharge, under a composition settlement.

2. It will be observed that there is no reinvestiture (*Buchanan*, 2d Dec. 1865), and the sequestration not being declared at an end, as in s. 38 and 142, the trustee still remains in office until he applies for his discharge in the usual way (s. 142, note *a*, and 152); and indeed may thereafter be removed (*Henderson*, 19th July 1849).

3. Opinion that the radical right to the estate remains in the bankrupt, and where he had been discharged without composition, and the trustee had granted him a letter declaring that he was fully vested in all his debts, held entitled to sue. (*Marshall*, 2d March 1860; *vide* s. 29, note *j*; also RIGHTS OF BANKRUPT.)

(*e*) As to issuing of abbreviates of discharge, *vide* Act 1857, s. 7, *postea*.

This Act not to extend to discharge Crown debtors, &c., unless Treasury give consent.

CXLVIII. This Act shall not extend to discharge any prisoner with respect to any debt due to her Majesty or her successors, or to any debt or penalty with which he shall stand charged at the suit of the Crown or any person for any offence committed against any Act or Acts relative to any branch of the public revenue, or at the suit of any Sheriff or other public officer upon any bail bond entered into for the appearance of any person prosecuted for any such offence, unless the Commissioners of her Majesty's Treasury for the time being shall consent to such discharge.

Sect. 149, 150.

Pay, half-pay, and pensions of bankrupts to be applicable for the benefit of creditors.

CXLIX. The Lord Ordinary or Sheriff may order such portion of the pay, half-pay, salary, emolument, or pension of any bankrupt as on communication from the Lord Ordinary or Sheriff to the Secretary of War, or the Lords Commissioners of the Admiralty, or the Commissioners of the Customs or Excise, or the chief officers of the department to which such bankrupt may belong or may have belonged, or under which such pay, half-pay, salary, emolument, or pension may be enjoyed by such bankrupt (*a*), or to the Court of Directors of the East India Company, they respectively may, under their hands, or under the hand of their respective chief secretary, or other chief officer for the time being, consent to in writing, to be paid to the trustee in order that the same may be applied in payment of the debts of such bankrupt; and such order and consent being lodged in the office of her Majesty's Paymaster-General, or of the Secretary of the said Court of Directors, or of any other officer or persons appointed to pay or paying any such pay, half-pay, salary, emolument, or pension, such portion of the said pay, half-pay, salary, emolument, or pension as shall be specified in such order and consent shall be paid to such trustee until the Lord Ordinary or Sheriff shall make order to the contrary (*b*).

(*a*) Held that this does not include the Lords Commissioners of the Treasury. (*Latta*, 18th July 1857.)

(*b*) *Vide* s. 29, note *c*.

Preferences and Collusions for procuring Discharge to be void.

Preferences, payments, and collusive agreements for discharge to be void.

CL. All preferences, gratuities, securities, payments, or other consideration not sanctioned by this Act, granted, made, or promised (*a*), and all secret (*b*) or collusive agreements and transactions, for concurring in, facilitating, or obtaining the bankrupt's (*c*) discharge, either on or without an offer of composition, and whether the offer be accepted or not, or the discharge granted or not, shall be null and void (*d*); and if during the sequestration any creditor shall have obtained any such preference, gratuity, security, payment, or other consideration or promise thereof, or entered into such secret or collusive consideration or agreement or transaction, the trustee shall be entitled to retain his dividend, and he or any creditor ranked (*e*) on the estate may present a petition to the Lord Ordinary or to the Sheriff, praying that such creditor shall be found to have forfeited his debt, and be ordained to pay to the trustee double the amount of the preference, gratuity, security, payment, or other consideration given, made, or promised, and if no cause be shown to the

Sect. 150. contrary (*f*), decree shall be pronounced accordingly; and the sums which in such case may be recovered shall, under deduction of the expenses of recovering the same, be distributed by the trustee among the other creditors (*g*) under the sequestration; and if the sequestration shall have been closed, it shall be competent to any creditor who shall not have received full payment of his debt to raise a multiplepoinding in name of the person who has obtained such preference, gratuity, security, payment, or other consideration or promise as aforesaid, and on the value (*h*) of the preference, gratuity, or security, or amount of the sum paid or consideration obtained, being ascertained, double such value or amount, together with the amount of the debt of the colluding creditor, shall be ordered to be consigned by him, and shall be divided among the creditors who were ranked or were entitled to be ranked in the sequestration, and have not received full payment of their debts, and who shall lodge claims in such multiplepoinding, according to their respective rights and interests: and such multiplepoinding shall be executed in terms of law against the colluding creditor, and notice thereof at the same time be inserted in the Gazette; and in the event of there being any surplus, after paying the full debts of the creditors, and defraying the expenses of the sequestration or other proceeding, the same shall be paid into the account of unclaimed dividends, as herein-after provided (*i*).

(*a*) It is enough that it is *promised*, although failed to be got. (*Thomas*, 22d Nov. 1872.)

(*b*) It would seem not to be illegal if trustee and creditors agreed to it. (*Thomas, supra.*)

(*c*) Not necessary that the bankrupt should have been a party to the preference. (*Thomas*, 23d Feb. 1869.)

(*d*) 1. A bill for such a consideration could not be enforced. (*Vide Kerr*, 14th Feb. 1828.)

2. Neither could an obligation. (*Thomas*, 23d Nov. 1869.)

(*e*) *Vide* s. 126.

(*f*) The Court did not inflict the penalty on a creditor who *bona fide* accepted a preference from a friend of the bankrupt, and made immediate restitution on discovery that it was illegal (*Carter*, 26th Oct. 1869.) But the House of Lords reversed this decision, and found that the Court had no discretion in dealing with the penalty, and decerned for the forfeiture of double the creditor's debt accordingly. (*Carter*, 9th Dec. 1871, Court of Session Cases, 3 ser. vol. ix. p. 49.)

(*g*) The creditors entitled to be ranked (s. 49, note *b*).

(*h*) See *Murdoch*, 29th Jan. 1864, as to a preference incapable of valuation.

(*i*) This section is declaratory of the common law, and provides not only a

claim for repetition but for penalties. Under a private composition-settlement, where a party obtained bills without the knowledge of the other creditors, as an inducement to give his assent, an action for repetition at the instance of the bankrupt and his cautioners sustained. (*Arrol*, 24th Feb. 1826.)

SECT. 151, 152.

Bankrupt to forfeit privileges, if participant in giving such preferences, &c.

CLI. If the bankrupt shall have been personally concerned in or cognisant of the granting, giving, or promising any preference, gratuity, security, payment, or other consideration, or in any secret or collusive agreement or transaction as aforesaid, he shall (*a*) forfeit all right to a discharge and all benefits under this Act, and such discharge, if granted, either on or without an offer of composition, shall be annulled; and the trustee or any one or more of the creditors (*b*) may apply by petition to the Lord Ordinary to have such discharge annulled accordingly (*c*).

(*a*) Held imperative, and Court bound, *ex proprio motu*, to enforce forfeiture, although neither trustee nor creditors made appearance. (*Pendreigh*, 5th June 1875.)

(*b*) A qualified creditor. (*Vide* s. 49, note *b*.)

(*c*) 1. Under this section (125) in 2 & 3 Vict. c. 41, a discharge was annulled, on petition of the trustee, where the bankrupt's wife, with his knowledge, gave a preference of 2s. 6d. per pound to a creditor to induce him to concur. (*Inglis*, 21st March 1843.)

2. The proceeding is penal, and does not transmit against representatives. (*Rae*, 2d Nov. 1877.)

Trustee's Discharge.

Proceedings for this purpose.

CLII. After a final division of the funds the trustee shall call a meeting of the creditors, by an advertisement in the Gazette (*a*), to be held not sooner than twenty-one days (*b*) after such publication, specifying the time, place, and purpose of holding the meeting, and by letters addressed by post (*c*) to every creditor who has produced an oath (*d*) as aforesaid, to consider as to an application for his discharge, and at such meeting he shall lay before the creditors the sederunt-book and accounts, with a list of unclaimed dividends, and the creditors (*e*) may then declare their opinion of his conduct as trustee, and he may thereafter (*f*) apply to the Lord Ordinary or the Sheriff, who, on advising the petition, with the minutes of the meeting, and hearing any creditor (*g*), may pronounce or refuse decree of exoneration and discharge (*h*); and an extract of such decree, signed by the Clerk of the Bills or the Sheriff Clerk, shall forthwith be transmitted to the accountant, and shall be entered in the register of sequestrations, and the bond of caution for the trustee delivered up (*i*).

(*a*) 'Edinburgh Gazette' (s. 4).

(*b*) As to computation of time, *vide* s. 5.

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(*c*) As to creditors under £20, *vide* s. 100.

(*d*) *Vide* s. 58.

(*e*) Creditors entitled to vote (s. 49, note *b*, and par. 294, &c.)

(*f*) Under 54 Geo. III. c. 137, s. 72, which likewise stipulates that before applying for his discharge he shall call a meeting and lay his accounts before it: held that a petition was invalid where this was not done, and that it was not validated by the fact that it was afterwards done before the petition was disposed of. (*Wyllie*, 17th Dec. 1835.)

(*g*) 1. Any qualified creditor (s. 49, note *b*).

2. It is the practice to order intimation to the Accountant in Bankruptcy. (*Milne*, 22d Jan. 1878.)

3. Held that intimation must also be given to creditors who object. (*Milne supra.*

(*h*) 1. The Court will not discharge the trustee if anything remains to be done, such as the making a payment or granting a deed. (*Bannatyne*, 10th Feb. 1810, F. C.)

2. It is no relevant excuse for a trustee not observing the provisions of the Statute, that it would have been prejudicial to the estate, and discharge was refused *hoc statu* accordingly. (*Dundas*, 19th Jan. 1822.)

3. But the accepting too high a commission, and the not lodging the duplicate of the sederunt-book in due time, were held not grounds for refusing a discharge. (*Bruce*, 7th July 1825.)

(*i*) The Court of Session granted a discharge to the testamentary trustees of a trustee who had died before obtaining a discharge. (*Brown's Trustees*, 17th Nov. 1864.)

Trustees to lodge unclaimed dividends, &c., in bank.

CLIII. Every trustee in any sequestration shall, before his discharge, transmit the sederunt-book to the accountant, who shall thereupon direct the trustee to deposit the unclaimed dividends in the same bank in which money received by him was lodged under the provisions of this Act; and the trustee shall forthwith transfer the whole dividends not then claimed (*a*) to such bank, to be there entered in an account to be kept under the title of "Account of Unclaimed Dividends;" and a book or books shall be kept in the office of the accountant, to be entitled "The Register of Unclaimed Dividends," containing a list, with the names arranged alphabetically, of all the creditors entitled to such unclaimed dividends, and in what bank deposited, which shall be patent to all persons, and the deposit receipts for such unclaimed dividends shall be transmitted to the accountant; and after the discharge of the trustee it shall be competent to any person, producing evidence of his right, to apply to the Lord Ordinary for authority to receive such dividends, and on the Lord Ordinary being satisfied of the claimant's right, a warrant shall be granted by him for payment of such dividend, whereof the accountant shall make an entry in the said register, and upon such warrant the bank shall pay the same: Provided that the claimant shall not be entitled to interest on such dividend,

Claimants showing right to apply to Lord Ordinary for authority to receive dividends.

Interest account of unclaimed dividends.

but such interest shall go into a general fund, of which an account shall be kept by such bank, to be called "The Interest Account of Unclaimed Dividends," and which fund shall be applied in such manner as shall be regulated by any Act of Parliament; and if at the end of twenty-five years from the date of closing any sequestration there shall remain in the bank any unclaimed dividends belonging to the estate, the same shall be vested in Government stock, and the dividends thereon shall be regularly accumulated for the purpose of forming a fund for defraying the expense of proceedings in bankruptcy or otherwise, as Parliament shall hereafter direct; and such bank shall once yearly at least balance the said accounts, and accumulate the interest with the principal sum, so that both shall thereafter bear interest as principal; and if any such bank fail to do so, such bank shall be liable to account as if such money had been so accumulated. Sect. 154, 155, 156.

(*a*) Where a dividend had been arrested, and, in consequence, the trustee consigned it in bank, thereafter the creditor had the arrestment discharged: held that this clause under the late Act (2 & 3 Vict. c. 41, s. 135) did not apply, and the creditor entitled to have the dividend, *as also the interest.* (*Parker*, 12th June 1841.)

CLIV. All accounts for law business incurred by the trustee shall, before payment thereof by the trustee, be submitted for taxation to the auditor of the Court of Session, or to the auditor of the Sheriff Court of the county in which the sequestration was carried on, as may be directed by a general meeting of the creditors (*a*). Law accounts to be taxed.

(*a*) As to calling meetings, *vide* s. 98 and 99; and as to voting, *vide* s. 101.

CLV. Any surplus of the bankrupt's estate and effects that may remain after payment of his debts, with interest, and the charges of recovering and distributing the estate, shall be paid to the bankrupt, or to his successors or assignees (*a*). Surplus to be paid to bankrupt.

(*a*) *Vide* s. 29, note *h*; also RIGHTS OF BANKRUPT.

Accountant in Bankruptcy.

CLVI. It shall be lawful for her Majesty, and her heirs and successors, to appoint a person versant in law and accounts, to be called "the Accountant in Bankruptcy," for performing the duties of that office, with such yearly salary (*a*), not exceeding eight hundred and fifty pounds per annum, payable quarterly out of any monies to be voted by Parliament for that purpose, and with such accommodation of office-rooms, or reasonable allowance for the same out of the said fund, as may be fixed by the Commissioners of her Majesty's Treasury, and the accountant shall be allowed three clerks, whom he shall appoint, with a salary not exceeding one hundred and Appointment of accountant in bankruptcy.

Sect. 157, 158.

fifty pounds yearly, which salaries shall be paid quarterly out of any monies to be voted by Parliament for that purpose; and the accountant shall hold no other office appointed to by Government, and shall not, directly or indirectly, by himself or any partner, be engaged in practice before the Supreme or any inferior Court, and he shall not directly or indirectly have any management or intromission with any money of any bankrupt estate under charge of the Court of Session or of any Sheriff Court, or constituting the fund in any process of sequestration.

(*a*) In acting under a remit from the Court as to the trustee's commission, the accountant is not entitled to a fee. (*Burt*, 17th July 1863.)

Accountant to keep register of sequestrations.

CLVII. The accountant shall keep a book, entitled "The Register of Sequestrations," in the general form of Schedule (G.) hereunto annexed, but with such additional heads as he may find necessary, which book shall be patent to all concerned, and he shall regularly enter therein the Division of the Court to which any sequestration awarded in the Court of Session is appropriated, or the Sheriff awarding sequestration and the Sheriff to whom the sequestration is remitted, the date of the first deliverance on every petition of sequestration, whether in the Court of Session or Sheriff Court, the name and designation of the debtor, the place and county of his residence, dwelling-house, or place of business, and the name and designation of the petitioning or concurring creditor, the date of awarding or recalling sequestration, the date of transmission to the Sheriff (if it has not been awarded by him), the time and place appointed for the election of the trustee and commissioners, the name and designation of the trustee and commissioners, and the time for lodging claims in order to obtain payment of the first dividend, the bankrupt's discharge on composition or otherwise, and the trustee's discharge, for which purpose the Clerks of the Bill Chamber and the Sheriff Clerk of each county shall transmit forthwith to the accountant a certified copy of the first deliverance in sequestrations awarded in the Court of Session and Sheriff Courts respectively, and the Sheriff Clerk of each county shall every six months transmit to the accountant the particulars necessary to enable him to make such entries, and the trustee shall be bound when required to furnish such particulars to the Sheriff Clerk.

Trustee to make an annual return to Sheriff

CLVIII. Each trustee shall, within fourteen days (*a*) after the thirty-first day of October in each year, or on the first lawful day after expiry of the said fourteen days, deliver, free of expense, to the Sheriff Clerk of the county, a return in the

form of the Schedule (H.) hereunto annexed (*b*) of every sequestration in which he is trustee; and the Sheriff Clerk shall, within fourteen days thereafter, transmit, in the form of the said Schedule, to the accountant, a return of all the sequestrations depending in the sheriffdom whereof he is clerk; and the accountant shall cause the returns so made to be regularly bound up and preserved, according to the alphabetical order of counties, in a volume to be kept at all times in his office, with an index thereto, framed by him, and which volume shall be patent to all concerned; and any trustee who shall fail to make such return shall be removable from his office at the instance of any one creditor (*c*), or of the accountant, or subject to such censure as the Lord Ordinary may think suitable, and be found liable in expenses.

SECT. 159. Clerk, and the Sheriff Clerk to the accountant.

(*a*) As to computation of time, *vide* s. 5.

(*b*) *Vide* form of Schedule, with notes for guidance of trustees, issued by Accountant in Bankruptcy, *postea*.

(*c*) 1. This means a qualified creditor. (*Vide* s. 49, note *b*.)

2. If creditor withdraw, any other creditor may be sisted. (*Richmond*, 11th Feb. 1854.)

CLIX. The accountant shall take cognisance of the conduct of all trustees and commissioners in sequestrations awarded after the passing of this Act, or in which any proceedings shall have been had within five years thereof; and in the event of their not faithfully performing their duties, and duly observing all rules and regulations imposed on them by Statute (*a*), Act of Sederunt, or otherwise relative to the performance of those duties, or in the event of any complaint being made to him by any creditor (*b*) in regard thereto, he shall inquire into the same, and if not satisfied with the explanation given he shall report thereon to the Lord Ordinary in time of vacation, or during time of session to either Division of the Court of Session, who, after hearing such trustees or commissioners thereon, and investigating the whole matter, shall decide, and shall have power to censure such trustees or commissioners, or remove them from their office, or otherwise to deal with them as the justice of the case may require (*c*).

Accountant in Bankruptcy to take cognisance of the conduct of trustees and commissioners;

(*a*) A trustee found liable in expenses who failed to perform certain statutory requisites—as to transmitting to the accountant copies of inventory and valuation of estate—and laid down by the Court that the smallness of the estate is no sufficient reason for neglect of duty by a trustee. (*Accountant in Bankruptcy*, 8th June 1859; *vide Accountant in Bankruptcy*, 5th Dec. 1862.)

(*b*) 1. Of course a qualified creditor. (*Vide* s. 49, note *b*.)

2. A creditor cannot proceed against the trustee under the Statute, except for an accounting (s. 86, and notes); and if he proceeded at common law he would require the concurrence of the Lord Advocate. (*Bell*, 28th Nov. 1862.)

SECT. 160, 161, 162, 163.

3. A creditor found entitled to the expense of necessary and useful information to the accountant, but not of appearance in Court when report taken up. (*Accountant in Bankruptcy*, 5th Dec. 1862.)

4. A creditor cannot proceed against trustee for improper conduct without concurrence of Lord Advocate, and the proceedings not competent in Bill Chamber. (*Paterson*, 16th Nov. 1872.)

(c) The Court may proceed to remove the trustee at once, on a report from the accountant, in respect of the retention of money in his hands, without any petition under s. 83. (*Accountant in Bankruptcy*, 17th Dec. 1867; *vide Lang*, 18th March 1870.)

To superintend annual returns;

CLX. The accountant shall superintend the annual returns required by this Act from trustees, and frame an annual report to the Court of Session showing the state of each depending sequestration returned to him, which report may be published in the Gazette (*a*) or otherwise as the Court shall direct; and the accountant shall have power, on the application of one or more of the creditors, or of his own accord, to require exhibition of the sederunt-book in any sequestration, and of any vouchers or documents which he may think necessary, and to direct that a meeting of the creditors shall be called to take any measures under consideration which he may judge requisite for the preservation or due management of the estate or more speedy realising and division of the funds or winding up of the estate.

(*a*) The 'Edinburgh Gazette' (s. 4).

To report disobedience;

CLXI. The accountant shall at all times, when requisite, report to the Lord Ordinary or either Division of the Court any disobedience by the trustee or commissioners of any requisition or order by him, and generally any matter which he may deem it necessary for the due discharge of his office to bring before the Lord Ordinary or the Court, and it shall be competent for the Lord Ordinary or the Court to deal summarily with the matter reported, as accords of law.

To give information to Lord Advocate.

CLXII. If the accountant shall possess information that shall lead him, on reasonable grounds, to suspect fraudulent conduct by the bankrupt, or malversation or misconduct on the part of the trustee or commissioners, such as may infer punishment, he shall be entitled to give information to her Majesty's Advocate, who shall direct such inquiry and take such proceedings therein as he shall think proper (*a*).

(*a*) *Vide* s. 97, which allows trustee to proceed against bankrupt if the creditors authorise him.

In case of illness, &c., of accountant, Lord

CLXIII. In case of the illness or temporary absence of the accountant, the Lord President of the Court of Session may

authorise any one of the accountant's clerks, or other qualified person, to discharge the duties of the office for the time. SECT. 164. President to appoint a deputy.

Judicial Power for winding up the Estates of Parties deceased.

CLXIV. It shall be competent to one or more creditors (*a*) of parties deceased to the amount of one hundred pounds, or to persons having an interest in the succession of such parties, in the event of the deceased having left no settlement appointing trustees or other parties having power to manage his estate or part thereof, or in the event of such parties not accepting or acting (*b*), to apply by summary petition to either Division of the Court for the appointment of a judicial factor, and, after such intimation of the petition to the creditors of the deceased, and other persons interested, as may be considered necessary, and after hearing parties, the Court may appoint such factor, subject to such conditions as to caution, and such other conditions as the Court may provide by Act of Sederunt; and such factor shall manage the estate, recover debts due to it, realise the moveable effects by public or private sale, as may be most expedient, dispose of the heritable estate by public sale or private bargain, according to such directions as the Court, on report of the accountant, may give (*c*), and shall apply the free proceeds, after defraying all expenses, in payment of the claims of creditors according to their several rights and preferences, conformably to a state of funds and scheme of division to be prepared by him, and considered and approved of by the Court, on a report by the accountant; and thereafter the factor shall account for the residue, if any, after payment of debts and expenses, to the parties having a right to the deceased's succession (*d*): Provided that the accountant shall annually examine and audit the proceedings, intromissions, and accounts of such factor, which shall be duly transmitted for that purpose, and report to the Court thereon, from time to time, as he may deem expedient, and shall generally exercise the like powers and discharge the same duties with regard to him as he is empowered and required to exercise and discharge with regard to a trustee under a sequestration, but subject always to the control of the Lord Ordinary or the Court. Application for judicial factor on estates of persons deceased.

(*a*) The creditor or creditors must produce evidence of their debts, but oaths do not seem requisite. (*Vide M'Farlane*, 6th March 1857.)

(*b*) Question: whether the Statute applies to all intestate estates, even if the heir or executor were willing to make up titles. (Ibid.)

(*c*) An appointment was made on application of parties interested, who were likewise creditors, and order given to the factor to call a meeting of

SECT. 165, 166, 167.

the deceased's creditors to take their instructions as to realising the estate. (*Vide M'Farlane*, 6th March 1857.)

(*d*) Where, after paying debts and legacies, there is a residue in the hands of the factor available to heirs or next of kin, the proper procedure is, that he should report to the Accountant in Bankruptcy the amount of the residue, and who are the parties claiming the same, and the grounds of their claims, with a view to the accountant reporting to the Lord Ordinary, and to the Lord Ordinary directing the disposal of it before proceeding to the recall of the factory, and the discharge of the factor. (*Alexander*, 15th July 1862.)

Judicial factor's duties to be regulated by Act of Sederunt.

CLXV. The Court shall have full power to regulate by Act of Sederunt (*a*) the caution to be found by such factor, the mode in which he shall proceed in realising and dividing the funds, and otherwise in the discharge of his duties, and any other matter which they may deem necessary.

(*a*) *Vide* Act of Sederunt, 25th Nov. 1857.

Application of trustees on estate of deceased parties for supervision of accountant.

CLXVI. If a party deceased has left a settlement, appointing trustees or other parties having power to manage his estate as aforesaid, it shall nevertheless be competent for the trustees under the settlement, with or without concurrence of the creditors of the deceased and of the persons interested in his succession, to apply in like manner to the Court, and obtain from them an order on the accountant to superintend the administration of the estate, in which case he shall exercise the like powers and discharge the like duties, under the control of the Lord Ordinary or the Court, which have been provided for in the preceding sections (*a*).

(*a*) Questioned whether the accountant's function is extended beyond the mere auditing of the trustee's accounts. (*Tweedie*, 22d Jan. 1858.)

Process of Cessio Bonorum.

Cessio bonorum.

CLXVII. Any trustee or trustees to whom the pursuer of a cessio shall grant a conveyance of his estate and effects for behoof of his creditors shall act under the supervision and control of the accountant in like manner as the trustee under a sequestration, and the accountant shall exercise the like powers and perform the like duties as in that case, but always under the directions of the Court, for which purpose it shall be the duty of every such trustee, or, failing him, of the clerk to any such process in the Court of Session, or of the clerk of the Sheriff Court in which the cessio has been granted, to transmit a note of the same, and residence of such trustee, to the accountant, and the accountant shall prepare a list of such processes, and shall require from such trustees, at the end of each year, accounts of their intromissions, and re-

port on the same annually to either Division of the Court, and he shall also bring before the Court any instance of malversation or irregularity in such trustees, whereupon the Court shall be entitled to inflict on them such censure or punishment as it may deem just (*a*). SECT. 168, 169.

(*a*) The process of cessio is regulated by the Act 6 & 7 Will. IV. c. 56, and Act of Sederunt, *antea*.

When creditors may resolve that bankrupt is only entitled to decree of cessio.

CLXVIII. It shall be competent for a majority in number (*a*) and value of the creditors (*b*) at any meeting called for the purpose (*c*) after the election of the trustee, if it shall appear to them "that the estate is not likely to yield free funds for "division among the ordinary creditors, after payment of pref- "erable debts and expenses, beyond one hundred pounds," to resolve that "the bankrupt shall only be entitled to apply for "and obtain a decree of cessio, and shall have no right to a "discharge in the sequestration;" and, on such resolution being passed, it shall be the duty of the trustee, after giving eight days' previous notice to the bankrupt, to report such resolution to the Lord Ordinary or the Sheriff (*d*), who shall hear parties, if required, and decide with reference to the whole circumstances of the case, with or without a report from the accountant, whether such resolution shall be confirmed or recalled; and if such resolution shall be confirmed, the bankrupt shall have no right to a discharge in the sequestration, but shall be entitled to apply for a decree of cessio, and the Court shall have power to grant such decree in the sequestration, without requiring the bankrupt to bring a separate process, and in all other respects the sequestration shall be proceeded with in common form.

(*a*) As to creditors under £20, *vide* s. 101.

(*b*) Qualified creditors. (*Vide* s. 49, note *b*, and par. 294, &c.)

(*c*) As to calling meetings, *vide* s. 98 and 99.

(*d*) The word "Sheriff" includes "Sheriff-Substitute" (s. 4; *vide* s. 170, note *e*).

Judicial Proceedings.

Appeals, &c., against resolutions of creditors and deliverances of trustee to the Lord Ordinary or Sheriff.

CLXIX. It shall be competent to appeal (*a*) against the resolutions (*b*) of the creditors at meetings either to the Lord Ordinary or the Sheriff, provided a note of appeal (*c*) shall be lodged with and marked by one of the clerks of the Bill Chamber within fourteen days (*d*) after the date of the meeting at which the resolution objected to has been passed, or (as the case may be) in the hands of and marked by the Sheriff-

SECT. 169. Clerk (*e*) within the like period; and it shall in like manner be competent to appeal against any deliverance (*f*) of the trustee or commissioners to the Lord Ordinary or the Sheriff, provided the note of appeal shall be lodged and marked as aforesaid within fourteen days from the date (*g*) of the deliverance; and where any such appeal is made, or where any petition or complaint is presented against the trustee or commissioners, or against any of the creditors, the Lord Ordinary or the Sheriff (as the case may be) shall appoint a copy thereof, and of his deliverance thereon, to be served on the respondent (*h*), or his mandatory (*i*), or known agent, and appoint the respondent to appear at a specified diet within such period as may be reasonable (*j*); and the Lord Ordinary or the Sheriff (as the case may be) shall at such diet hear parties *viva voce*, and the Lord Ordinary shall proceed to dispose of the case, with or without a record, as he shall consider best; and the Sheriff, without a record, may decide, provided he shall specify the facts, and assign the grounds of his judgment (*k*); but if he shall see cause he may order minutes (*l*) to be lodged by the parties, containing their averments in fact and pleas in law, without argument, and may hold the same as a closed record, and proceed in a summary way, and in pronouncing his judgment he shall assign his reasons; and it shall be competent to the Lord Ordinary or the Sheriff, if they shall think fit, where any resolution of a meeting of the creditors is appealed against, to order a new meeting to be held, in order to reconsider the resolution (*m*).

N.B.—*The above section is almost entirely the same as s.* 127 *of* 2 & 3 *Vict. c.* 41, *so as to make the undernoted cases, so far as decided under the old Statute, quite applicable to the new one.*

(*a*) 1. The right of appeal may be waived, as by attending a proof under the interlocutor appealed against. (*Kerr*, 22d Feb. 1849.)

2. Where the resolution is not appealed, it seems quite competent to reduce it on the ground of fraud, deception, or defect of due notice. (*Walker*, 3d Dec. 1835.)

(*b*) 1. Where the creditors at a meeting resolved that one of the claims should not be received, and instructed the trustee to keep it out of his states, the Court at once recalled the resolution. (*Henry*, 24th Jan. 1832.)

2. An appeal by the bankrupt against the right of a creditor to vote at a meeting, held not competent, as it was not a resolution. (*Robertson*, 13th Dec. 1842.)

(*c*) 1. There is no form for the appeal, so a note of appeal with a prayer to find the votes invalid, and to recall the resolution, was sustained to entitle the Court to recall it on the merits. (*Somerville*, *infra.*)

2. The term "Sheriff" in the section includes "Sheriff-Substitute" (s. 4; *vide* s. 170, note *e*).

(*d*) As to computation of time, *vide* s. 5.

(*c*) Where a clerk in the Sheriff-Clerk's office had initialed an appeal, and the Sheriff-Clerk himself had initialed the margin of the Sheriff's deliverance, which was dated within fourteen days, held sufficient. (*Inglis*, 17th March 1864.) SECT. 170.

(*f*) Where a creditor sent an oath to the trustee who returned it with the following endorsation signed by him, "This affidavit presented to me of this date, the sequestration wound up, and the bankrupt discharged," which was not the case, held not a deliverance requiring to be appealed. (*Henderson*, 19th July 1849.)

(*g*) In two special cases the appeal days run from the date of the 'Gazette' notice (s. 127 and 130). By these sections the appeal days are fifteen days.

(*h*) 1. In appeal against a resolution of creditors, it seems not necessary in the appeal to mention any parties as respondents. (*Purdon*, 10th Dec. 1853.)

2. And in such an appeal held quite sufficient to serve it on the trustee alone. (*Smith*, 10th July 1848.)

3. The practice is to serve the appeal on all the creditors who voted for the resolution appealed against, and in some cases also on the bankrupt or trustee, where they are interested.

4. In an appeal against a renewal of protection, the trustee and bankrupt were cited, and both held entitled to costs (*Cockson*, 13th Feb. 1864). But in a matter of this nature, where trustees have so little interest, it will be useful for them to read the opinion of the then Lord Justice-Clerk (Inglis) who dissented from the judgment of the Court.

(*i*) Where the service is ordered to be made upon the mandatory, he ought to be designed as such, and in one case the subsequent proceedings were quashed where this was not done. (*Ewing*, 11th Jan. 1860.)

(*j*) Where the service was not made in time to enable the parties to appear at the diet fixed by the Court, held that the appeal was not lost, and new service ordered. (*Aberdeen Bank*, 3d Dec. 1859.)

(*k*) A case remitted back to the Sheriff where he simply refused an appeal. (*Davidson*, 14th March 1863.)

(*l*) Parties cannot go beyond their minutes, nor plead on grounds inconsistent with them, when the case goes to the Court of Session. (*Ord*, 3d July 1846.)

(*m*) 1. *Jurisdiction in the Appeal.*—It does not necessarily follow because an appeal is *competent* from the decisions of the creditors, or trustee, or commissioners, that the Court can review the decision on the *merits*. On the contrary, it has been held in an appeal against a resolution of creditors to renew the bankrupt's protection, that the Sheriff could only judge if there was a statutory majority; and if there was, that it was *imperative* on him to renew the protection. (*Hodge*, 4th Dec. 1855.)

2. As a rule, however, the appeal opens up the consideration of the merits. (*Vide Sommerville*, 10th Feb. 1859; *Steel*, 2d March 1865.)

3. But the Court will hardly ever interfere with a resolution of the creditors as to management. (2 B. C. 354, 411, 412; *Goodwin*, 26th Nov. 1803.)

CLXX. It shall be competent (*a*) to bring under the review (*b*) of the Inner House of the Court of Session, or before the Lord Ordinary in time of vacation (*c*), any deliverance (*d*) of Review of Sheriff's judgments.

SECT. 170. the Sheriff (*e*), after the sequestration has been awarded (except where the same is declared not to be subject to review), provided a note of appeal (*f*) be lodged with and marked by the Sheriff Clerk, within eight days (*g*) from the date of such deliverance (*h*), failing which the same shall be final (*i*); and such note, together with the process, shall forthwith be transmitted by the Sheriff Clerk to the Clerk of the Bill Chamber (*j*); and the Lord Ordinary's decision shall, when not expressly made final by this Act, be subject to review of the Inner House (*k*); and it shall be competent to the Inner House or the Lord Ordinary to remit to the Sheriff, with instructions (*l*).

N.B.—*This section is substantially the same as s.* 128 *of* 2 & 3 *Vict. c.* 41, *so as to make the following decisions applicable to this Statute where given under the former Statute.*

(*a*) Under 2 & 3 Vict. c. 41, s. 127 and 128, which are similar to the above sections, held under an appeal to the Sheriff against a resolution of creditors anent removing the trustee, that as he failed to appear before the Sheriff when cited, he could not afterwards insist in an appeal to the Court of Session. (*M'Cubbin*, 9th July 1856.)

(*b*) In appealing against a judgment disposing of any question which depends on a scrutiny of votes, it does not seem necessary for the respondent to present a cross appeal in order to attack the appellant's votes, at least it was so decided in an appeal to the Court of Session in a competition for a trusteeship. (*Hay*, 5th Feb. 1850.)

(*c*) Held that an appeal is a Bill Chamber case, and the judges in Bill Chamber cases are the Inner House during session, and the Lord Ordinary on the Bills during vacation. (*Grant*, 1st Dec. 1859; *vide Westland*, 18th Nov. 1840; also s. 43, note *b*.)

(*d*) 1. An appeal to the Court of Session against Sheriff's decision on a claim brings up all previous interlocutors. (*Pilling*, 30th June 1857.) This case was decided upon 2 & 3 Vict. c. 41, s. 128, where the phraseology on this point is the same.

2. Held competent under the above section to appeal against a deliverance of the Sheriff although not disposing finally of the matter in dispute. (*Latta*, 10th Feb. 1865.)

(*e*) By the Sheriff Court Acts a distinction is made between the Sheriff-Substitute and the Sheriff-Depute, and an appeal is expressly allowed from the former to the latter in particular stages of a cause. But by s. 4 of this Statute, the word "Sheriff" means either "Sheriff-Substitute" or "Sheriff-Depute," no distinction being drawn between them; and as no such mode of appeal is expressly provided for as an appeal from Substitute to Depute, but, on the contrary, as there is a particular mode of appeal pointed out in such cases, different from that mode, no such appeal is allowed. Accordingly, under the late Statute, where the phraseology was the same, except that there was no clause interpreting the word "Sheriff," the review of the Substitute's judgment by the Depute was held to be excluded. (*Balderston*, 20th Feb. 1841.)

(*f*) It does not require to be addressed to the Lords of Council and Session,

nor to recite the interlocutor appealed against, nor to contain any prayer. (*Ewing*, 11th Jan. 1860.) SECT. 171, 172, 173.

(*g*) As to computation of time, *vide* s. 5.

(*h*) *Vide* s. 140, note *q*, where an appeal was sustained even though the deliverance was extracted.

(*i*) An annuitant held not prevented from voting though the Sheriff's valuation is appealed against. (*Watson*, 27th June 1848; *Ker*, 20th Feb. 1829, aff. 9th Dec. 1830.)

(*j*) Where an appeal was taken by a creditor against a judgment of a Sheriff, and who allowed the Sheriff to proceed in ignorance of the appeal, he was not allowed the expenses after that date. (*M'Nellan*, 5th Feb. 1856.)

(*k*) It is not the original appellant, but the party reclaiming against the Lord Ordinary's judgment, that has the option of choosing the Division. (*Gow*, 14th Nov. 1862.)

(*l*) 1. Under an appeal to the Court of Session from the decision of the Sheriff, at the instance of the trustee, held that the creditor under that appeal was not entitled to a ranking higher than the Sheriff had given him. (*Forbes*, 2d July 1851.)

2. In an appeal from the deliverance of a Sheriff, a general finding of costs includes costs in the Sheriff Court. (*Darling*, 17th Jan. 1852.)

CLXXI. Where any judgment of the Lord Ordinary is to be brought under review of the Inner House, the same shall be done by a reclaiming note in common form presented within fourteen days (*a*) from the date of the judgment (*b*); and such reclaiming note shall be disposed of by the Inner House as speedily as the forms of Court will allow. Review of Lord Ordinary's judgments.

(*a*) As to computation of time, *vide* s. 5.

(*b*) Held, where the fourteen days allowed for reclaiming in a sequestration expired during the vacation, that a reclaiming note was competently presented and boxed on the first box-day after the expiry of the reclaiming days. (*Joel*, 11th Jan. 1860.)

CLXXII. During the dependence of appeals or petitions and complaints it shall be competent to the Sheriff (*a*) to give such orders as may be necessary to regulate the interim possession and administration of the estate. Regulation by Sheriff of interim possession.

(*a*) Or Sheriff-Substitute (s. 4; *vide* s. 170, note *e*).

CLXXIII. If any appeal shall be made to the House of Lords, the sequestration shall, in all respects not inconsistent with or injurious to the interests which may be affected by the appeal, proceed without interruption, and the Lord Ordinary shall make such orders as may be necessary to regulate the interim possession and management of the estate, and which orders shall not be subject to appeal. Appeals to House of Lords.

SECT. 174, 175, 176, 177.

Deliverances, extracts, and copies shall form evidence.

CLXXIV. All deliverances (*a*) under this Act purporting to be signed by the Lord Ordinary or by any of the judges of the Court of Session, or by the Sheriff (*b*), as well as all extracts or copies thereof or from the books of the Court of Session or the Sheriff Court purporting to be signed or certified by any clerk of court, or extracts from or copies of registers purporting to be made by the keeper thereof, or extractor, shall be judicially noticed by all courts and judges in England, Ireland, and her Majesty's other dominions, and shall be received as *prima facie* evidence, without the necessity of proving their authenticity or correctness, or the signatures appended, or the official character of the persons signing, and shall be sufficient warrants for all diligence and execution by law competent.

(*a*) *Vide* interpretation of "deliverance" (s. 4).

(*b*) Or Sheriff-Substitute (s. 4; *vide* s. 170, note *e*).

Deliverances, &c., may be printed.

Service of citations.

CLXXV. All deliverances, bonds, schedules, and executions under this Act may be either printed or in writing, or partly both; and service or citation may be made by a competent officer without witnesses (*a*).

(*a*) *Vide* s. 43, note *e*, as to service by messengers-at-arms.

Trustee and commissioners may compound and transact.

CLXXVI. The trustee may (*a*), with consent of the commissioners (*b*), compound (*c*) and transact or refer to arbitration any questions which may arise in the course of the sequestration regarding the estate, or any demand or claim made thereon, and the compromise, transaction, or decree arbitral (*d*) shall be binding on the creditors and the bankrupt.

(*a*) 1. The trustee may assent to a composition in a debtor's sequestration. (2 B. C. 444; *Sheriff*, 25th May 1811.)

2. The power of the trustee, with consent of the commissioners, to compound and transact, is of course subject to the higher control of the creditors (s. 82 and 96).

(*b*) A majority is a quorum (s. 4).

(*c*) *Vide Dalzell*, 12th December 1876, where trustee and commissioners gave up a portion of the heritable estate to a heritable creditor in lieu of his claims against the estate. Held to be a compromise under this section, and not a sale under s. 115, as these were conflicting claims and a real dispute.

(*d*) No stamp is necessary (s. 184).

Agents in Court of Session may be

CLXXVII. It shall be lawful for all agents duly qualified to practise before the Court of Session to practise in all Sheriff Courts, in so far as relates to any of the proceedings authorised

by this Act to be carried on before the Sheriff: Provided that they shall not be entitled to payment of any higher fees than those legally exigible in such Courts (*a*). Sect. 178, 179, 180. agents in causes under this Act before Sheriff.

(*a*) Under this section (132) of 2 & 3 Vict. c. 41, it was held to be illegal for the Sheriff to allow fees according to the table of the Court of Session, but as no appeal was taken, it was not held such an excess of power as to make the proceedings reducible. (*Baillie*, 15th Nov. 1845, aff. April 1848.)

Miscellaneous Provisions.

CLXXVIII. If any person shall be guilty of wilful falsehood in any oath made in pursuance of this Act, he shall be liable to a prosecution, either at the instance of her Majesty's Advocate, or at the instance of the trustee, with the concurrence of her Majesty's Advocate: Provided that, in the latter case, the prosecution shall be authorised by a majority (*a*) of the creditors (*b*) present (*c*) at a meeting to be called for the purpose (*d*); and such person shall, on conviction, besides the awarded punishment, forfeit to the trustee, for behoof of the creditors, his whole right, claim, and interest in or upon the sequestrated estate, and the same shall be distributed, either under the sequestration, or, if it be closed, under a process of multiplepoinding, as is hereinbefore provided. Punishment of wilful falsehood.

(*a*) A majority in value (s. 101).

(*b*) Qualified creditors (s. 49, note *b*, and par. 294, &c.)

(*c*) Whether voting or not (s. 101 and notes).

(*d*) As to calling meetings, *vide* s. 98 and 99.

CLXXIX. The Lord Ordinary or Sheriff (*a*), on cause shown, may order that for a period not exceeding three months from the date of the order all letters addressed to the bankrupt shall be delivered by the Postmaster-General, or the officers acting under him, to the Sheriff Clerk or trustee (*b*), to be opened in presence of the Sheriff, after written notice to the bankrupt to attend, if within Scotland; and in case the letters shall relate in whole or in part to the estate, they shall be placed in such custody as the Sheriff may direct; and the Lord Ordinary or Sheriff may, on cause shown, renew such order for a like period as often as shall be necessary. Trustee may be authorised to receive and open postletters.

(*a*) Or Sheriff-Substitute (s. 4; *vide* s. 170, note *e*).

(*b*) This is not competent at common law. (*Ure*, 18th Nov. 1829.)

CLXXX. The fees which are set forth in the Schedule (I.) hereunto annexed shall be payable on the proceedings specified, and shall form a fund, which shall be applied in the payment Fees payable.

Sect. 181, 182, 183, 184.

of the salaries and expenses of officers in the court in which the same are payable, and any surplus which shall at any time arise shall be paid as the Commissioners of her Majesty's Treasury shall direct.

Fees payable to the Bill Chamber Clerks.

CLXXXI. The Bill Chamber Clerks are hereby prohibited from charging or receiving any fees, except for copies of interlocutors or other papers ordered or required, for which an allowance shall be paid at the rate of sixpence for each page of one hundred and fifty words, without any farther charge for stationery.

Gazette keeper to furnish copies of Gazette.

CLXXXII. From and after the commencement of this Act the keeper of the Gazette (*a*) shall on each day of publication furnish a copy thereof to the Keeper of Edictal Citations and to the Bill Chamber Clerks, and to the Accountant, who shall keep the same regularly filed, and make the said Gazettes on all occasions patent to the lieges at office hours, on payment of a fee of sixpence and no more.

(*a*) 'Edinburgh Gazette' (s. 4).

Charges on advertisements under this Act.

CLXXXIII. No advertisement inserted in the 'London Gazette' or in the 'Edinburgh Gazette,' by virtue of this Act, or the Act passed in the sixth and seventh year of the reign of his late Majesty King William IV., chapter fifty-six (*a*), shall be charged by the keepers of the said Gazettes for publication therein at a higher price, nor shall a higher price be paid for such publication, than the sums specified in the Schedule (K.) hereunto annexed.

(*a*) The Act 6 & 7 Will. IV. c. 56, is the Cessio Act, *antea*.

Conveyances, deeds, &c., relating to estates of bankrupts, not liable to stamp or other duties.

CLXXXIV. From and after the commencement of this Act, all conveyances, assignations, instruments, discharges, writings, or deeds relating solely to the estate belonging to any bankrupt against whom sequestration has been or may be awarded, either under this or any former Act, and which estate, after the execution of such conveyances, assignations, instruments, discharges, writings, or deeds, shall be and remain the property of such bankrupt, for the benefit of his creditors, or the trustees appointed or chosen under or by virtue of such sequestration, and all discharges to such bankrupt, and all deeds, assignations, instruments, or writings for reinvesting such bankrupt in the estate, and all powers of attorney, commissions, factories, oaths, affidavits, articles of roup or sale, submissions, decrees arbitral, and all other instruments and writings whatsoever, relating solely to the estate of such bankrupt, and all other deeds or writings form-

ing a part of the proceedings ordered under such sequestration, shall be exempt from all stamp duties or other Government duty. SECT. 185.

CLXXXV. It shall be lawful for the Judges of the Court of Session, either during session or vacation, by an Act or Acts of Sederunt, from time to time to apportion the duties to be performed by the officers in the Bill Chamber (*a*), or in the said Court, or in the Sheriff Courts, and to regulate procedure in relation to this Act, in so far as consistent therewith, and to establish a table of fees to be allowed to agents, both in the Court of Session and Sheriff Courts, for conducting the proceedings, and to amend or alter such Act or Acts from time to time; and such Act or Acts of Sederunt shall within one month after the making thereof be transmitted by the Lord President of the Court of Session to one of Her Majesty's principal Secretaries of State, that the same may be laid before both Houses of Parliament. Power to Court of Session, by Acts of Sederunt, to apportion duties, and regulate procedure in relation to this Act.

(*a*) *Vide* Act of Sederunt, 26th May 1859, *postea*.

SCHEDULES

SCHEDULES REFERRED TO IN THIS ACT.

SCHEDULE (A.)

No. 1.

Abbreviate for the Register of Inhibitions.

Petition for sequestration of *A.B.* [*name and designation*].
Date of first deliverance day of
(Signed) *C.D.* [*if an agent, state so.*]

No. 2.

Certificate by the Keeper.

This abbreviate was presented by [*or* received by post from] [*name and design the presenter or party transmitting by post*] and recorded on [*date*] in the Register of Inhibitions at Edinburgh. (Signed) *E.F.*, Keeper.

No. 3.

Abbreviate.

Petition for transferring, in terms of the "Bankruptcy (Scotland) Act, 1856," from *A.B.* [*name and designation*], as heir of *C.D.* [*name and designation*], the estates of *C.D.*, date of deliverance day of
(Signed) *G.H.* [*if an agent, state so.*]

SCHEDULE (B.)

Notice to the Gazettes.

The estates of *A.B.* [*name and designation*] were sequestrated on [*date, month, and year*] by the [Court of Session *or* Sheriff of].

The first deliverance is dated the [*date*].

The meeting to elect the trustee and commissioners is to be

held at [*hour*] o'clock on the [*day of the week*] the [*date, month, and year*], within [*specify particular place*] in [*town*]. A composition may be offered at this latter (*a*) meeting; and to entitle creditors to the first dividend, their oaths and grounds of debt must be lodged on or before the [*insert date*] (*b*).

All future advertisements relating to this sequestration will be published in the 'Edinburgh Gazette' alone.

(Signed) *P.Q.*, agent [*specify place of business*].

NOTES.

(*a*) The word "latter" is here by mistake.

(*b*) 1. The period for lodging claims is two months prior to the date of paying the dividend (s. 123); and the latter date is the first lawful day after the expiration of six months from the date of the deliverance awarding sequestration (s. 129);—so that if the sequestration is dated 1st January, the date of lodging claims is 1st May, and the dividend is payable on 2d July, if it is a lawful day (*vide* s. 5).

2. Notice of remit must be given if the sequestration is awarded by the Court of Session (s. 19). It may be as follows: "The sequestration has been remitted to the Sheriff Court of shire."

3. Notice of personal protection having been granted must also be given (s. 44). It may be as follows: "A warrant of protection has been granted to the bankrupt till the meeting for election of trustee."

SCHEDULE (C.)

Form of Bond of Caution for Trustee.

I *A.B.* [*name and designation*], having been appointed trustee on the sequestrated estate of *C.D.* [*name and designation*], and I *E.F.* [*designation*] as cautioner, surety, and full debtor for and with the said *A.B.*, hereby bind and oblige ourselves, conjunctly and severally, our heirs and executors, that I the said *A.B.* shall faithfully discharge all the duties which by law attach to the said office of trustee, and fully account for my whole intromissions with the said estate, and make payment of any balance due by me to the creditors on the said estate, or trustee elected by them to succeed me; declaring that this bond shall not be in any way affected; nor shall I the said *E.F.* be liberated by any omission, negligence, or want of diligence on the part of the creditors or commissioners on the said estate. [*In case the caution has been limited by the creditors, the following clause will be here inserted:* And declaring further, that this bond, so far as con-

cerns me the said *E.F.*, shall not bind me or my foresaids to a greater extent than the sum of [*here insert sum in writing*], to which my obligation before written is hereby limited.] In witness whereof this bond (*so far as not printed*), written and filled up by [*here shall be inserted in writing a testing clause in legal form*].

(Signed) *A.B.*
E.F.

O.T., witness.
L.F., witness.

SCHEDULE (D.)

Act and Warrant of Confirmation of the Trustee.

[*Place and date.*]

The Sheriff of the county of [*insert county*] has confirmed and hereby confirms *A.B.* [*name and designation*] trustee on the sequestrated estate of *C.D.* [*name and designation*]; and the whole of the estates and effects, heritable and moveable, and real and personal, wherever situated, of the said *C.D.*, are transferred and belong to *A.B.* as trustee for behoof of the creditors of the said *C.D.*, in terms of the "Bankruptcy (Scotland) Act 1856;" and the said *A.B.* has, as trustee aforesaid, in terms of the said Act, full right and power to sue for and recover all estates, effects, debts, and money belonging or due to the said *C.D.*

Signed) *C.D.*, Sheriff Clerk.

SCHEDULE (E.)

No. 1.

Abbreviate for the Register of Adjudications.

The whole estates and effects, heritable and moveable, and real and personal, wherever situated, of *A.B.* [*name and designation*] are transferred and belong to *E.F.* [*name and designation*], as trustee on his sequestrated estate, conform to act and warrant of confirmation, dated the day of , issued in terms of the "Bankruptcy (Scotland) Act, 1856." [*Signed by the trustee or his agent.*]

No. 2.

Certificate by the Keeper.

This abbreviate was presented by [*name and designation*], and recorded on [*date*] in the Register of Abbreviates of Adjudications. (Signed) *E.F.*, Keeper.

No. 3.

Abbreviate of Adjudication.

The estates vested in *A.B.* [*name and designation*] as heir of *C.D.* [*name and designation*] are transferred and belong to *E.F.* [*name and designation*], as trustee on the sequestrated estate of the said *C.D.*, conform to deliverance by the Lord Ordinary, dated the day of , and in terms of the "Bankruptcy (Scotland) Act 1856."

[*Signed by the trustee or his agent.*]

SCHEDULE (F.)

For the Gazette.

Sequestration of *C.D.* [*designation.*]

A.B. [*name and designation*] has been elected trustee on the estate, and *E.F.* and *G.* [*names and designations*] have been elected commissioners. The examination of the bankrupt will take place in the Sheriff Court House [*or other place*] on [*day of week*] the [*date*] of [*month*] next, at [*hour*] (*a*). The creditors will meet in [*specify the place, day, date, month, and hour*] (*b*) o'clock. [*If any offer of composition has been entertained at the meeting for election of trustee, intimate this, as provided by the Act*] (*c*).

[*Signed by the trustee.*]

[*Date.*]

NOTES.

(*a*) The examination must take place not sooner than seven nor later than fourteen days from the date of the warrant (s. 87).

(*b*) The second meeting must be held not sooner than seven nor later than fourteen days after the examination (s. 87).

(*c*) The Act does not specify how long the Gazette notice must be published before the examination (s. 87).

SCHEDULE (G.)

Register of Sequestrations.

Name and Designation of Bankrupt.	Place and County of Bankrupt's Residence or Business.	Name and Designation of Petitioning or Concurring Creditor.	Whether Sequestration awarded by Sheriff (*state the County*) or by Court of Session.	Division of the Court if by Court of Session.	To what Sheriff remitted.	Date of First Deliverance.	Date of awarding. (If recalled, Entry to be in this Column.)	Date of Transmission to Sheriff and of Receipt by Sheriff Clerk.	Time and Place for electing Trustee.	Trustee's Name and Designation.	Commissioners' Names and Designations.	Time for lodging Claims for Dividend.	Date of Bankrupt's Discharge	Bankrupt's Discharge on or without Composition.	Date of Trustee's Discharge

SCHEDULE (H.)

ANNUAL RETURN by each TRUSTEE within Fourteen Days after the 31st Day of October, and by each SHERIFF CLERK within Fourteen Days thereafter.

Name and Designation of Bankrupt.	County and Place.	By whom Sequestration awarded.	Name and Designation of Trustee.	Names and Designation of Commissioners.	Amount of Funds as in the Bankrupt's State.	Amount of Funds realised.	Amount of Debts.	Allowance to Bankrupt.	Discharge on Composition or without Composition.	Amount of Composition, and when payable, and Names and Designation of Cautioners.	Dividend, Amount paid or unpaid.	Amount of Expenses.		
												Trustee's Commission.	Law Expenses.	Miscellaneous.

Signed by Trustee and by Sheriff Clerk.

N.B.—*Vide Form of Schedules with Notes by Accountants in Bankruptcy for guidance of Trustee*, postea.

SCHEDULE (I.)

Table of Fees payable under this Act.

I.—In the Court of Session.

(1.) To the collector of the fee fund:	£	s.	d.
Original petitions for sequestration, or any other writ or step by which a process of sequestration is originated	0	10	0
All other papers, being steps of procedure, and not productions, each	0	2	6
(2.) To the keeper of the General Minute-Book:			
For entering the first deliverance, and deliverance awarding sequestration, adjudication, and discharge, and approval of composition, each	0	2	6
For entering any other deliverance or intimation	0	1	0
(3.) To the extractors:			
For every extract made of the proceedings or of the deliverance of the Lord Ordinary or Inner House, per sheet	0	1	0

II.—To the Keepers of the Records.

For entering any schedule	0	1	0
For entering on the margin of any record the recall of sequestration, or discharge in favour of the bankrupt	0	1	0
For access to and liberty to make excerpts of proceedings under this Act from any register or record appointed herein to be kept, or in which entries are herein appointed to be made, a fee of one shilling for each year of the record inspected, but not exceeding in all for any one record	0	10	0
For extracts or certified copies therefrom, per sheet	0	1	0
For collating and certifying extracts therefrom, per sheet	0	0	6

III.—Sheriff Court.

(1.) To the Sheriff Clerk:

	£	s.	d.
On every deliverance pronounced by the Sheriff, awarding sequestration, declaring the election of a trustee, appointing diets of examination, granting a discharge to the bankrupt, approving of composition, or exonerating the trustee .	0	2	6
For every other deliverance, not being merely an order for papers or revisals	0	1	0
For every transmission to or by him of the proceedings (*a*)	0	1	0
For entering the first deliverance, and the deliverance awarding sequestration, in the register, each (if separate)	0	0	6
For entering the name and designation of the trustee and commissioners in the register . .	0	0	6
For issuing, receiving back, and examining bond of caution for trustee, to be paid at the issuing of bond	0	2	6
For oath of the bankrupt, and examinations of him or others, per sheet . .	0	1	0
For every warrant of apprehension or citation of the bankrupt or others, or commission to take examination	0	2	6
For every certified copy or extract of the proceedings before the Sheriff, or of any deliverance pronounced by him, per sheet . . .	0	1	0
For every annual report of the depending sequestrations, for each sequestration, to be paid by the trustee	0	0	6
For every borrowing of all or any part of the proceedings	0	0	6

(2.) To the Sheriff (*b*):

Attending any meeting of creditors or examination, for each such meeting or diet of examination, not being on the same day . .	1	1	0

(*a*) The Sheriff Clerk is not entitled, in addition to this fee, to a fee for writing a letter with the proceedings. (*Orr*, 28th Feb. 1843.)

(*b*) This fee is payable to the Sheriff in his own right, and does not go into the fund referred to in s. 180 of the present Act. (Act 1860, s. 7, *postea*.)

SCHEDULE (K.)

Table of Prices payable for Advertisements in the London or Edinburgh Gazette.

	£	*s.*	*d.*
For six lines and under	0	6	0
For more than six lines and not exceeding ten lines	0	7	6
For more than ten lines and not exceeding fifteen lines	0	10	6
For more than fifteen lines and not exceeding twenty lines	0	14	6
For more than twenty lines and not exceeding twenty-five lines	0	17	6
For more than twenty-five lines and not more than thirty lines	1	0	6

ACT OF SEDERUNT

FOR

FURTHER REGULATING PROCEEDINGS IN SEQUESTRATIONS AWARDED PREVIOUS TO 1ST NOVEMBER 1856.

EDINBURGH, 26*th May* 1859.

THE Lords of Council and Session, in pursuance of the powers vested in them by the 185th section of the Act of Parliament passed in the 19th and 20th year of her present Majesty's reign, cap. 79, intituled "An Act to consolidate and amend the Laws relating to Bankruptcy in Scotland," considering that by section 3d of the said Statute it is enacted as follows:—All sequestrations awarded on or after the first day of November 1856, "or proceedings occurring on or after the said "date in sequestrations which have been awarded before it "under former Acts, unless it be otherwise hereinafter pro- "vided, shall, if and so soon as an interlocutor to that effect "pronounced by the Lord Ordinary shall become final, or if "and so soon as an interlocutor to that effect shall be pro- "nounced by the Court, be regulated by this Act," do hereby enact and declare as follows:—

That in every sequestration which has been awarded previous to the first day of November 1856, under previous Acts, and which depended in the office of a clerk of the Court of Session, as soon as an interlocutor pronounced therein to the effect before mentioned by the Lord Ordinary shall have become final, or so soon as an interlocutor to that effect shall be pronounced therein by the Court, the process of sequestration shall be transmitted by the Clerk in the Court of Session, in whose office the same had previously depended, to the Clerks in the Bill Chamber of the Court of Session, and that thenceforward the Bill Chamber Clerks shall be clerks to such sequestration.

And the Lords appoint this Act to be inserted in the books of sederunt, and to be printed and published in the usual manner.

DUN. M'NEILL, *I.P.D.*

BANKRUPTCY AND REAL SECURITIES (SCOTLAND) ACT, 1857.

CAP. XIX.

An Act to remove Doubts as to the Law of Bankruptcy and Real Securities in Scotland.—[10th August 1857.]

WHEREAS doubts have arisen regarding the construction of certain clauses contained in an Act passed in the nineteenth and twentieth years of the reign of her present Majesty, intituled *An Act to consolidate and amend the Laws relating to Bankruptcy in Scotland*, and in another Act of the same year of her Majesty, intituled *An Act to amend and re-enact certain Provisions of an Act of the Fifty-fourth Year of King George the Third, relating to Judicial Procedure and Securities for Debt in Scotland*, and it is expedient that such doubts should be removed: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

19 & 20 Vict. c. 79.

19 & 20 Vict. c. 91.

Short title.

I. This Act may be cited as "The Bankruptcy and Real Securities (*Scotland*) Act, 1857."

Court of Session or Sheriffs may award sequestration of deceased debtor.

II. Sequestration in the case of a deceased debtor may be awarded by the Court of Session or by the Sheriff of the county in which the debtor for the year preceding his death had resided or carried on business (*a*).

(*a*) *Vide* Act 1856, s. 18, *antea*.

Notice of remit by the Sheriffs

III. In the event of sequestration having been awarded by the Sheriffs of two or more counties, and of the latter seques-

tration or sequestrations being remitted by the Sheriff or Sheriffs awarding them to the sequestration first in date, a notice of such remit shall be inserted in the Gazette (*a*) four days after a copy of the deliverance of such remit could be received in course of post in Edinburgh (*b*). to be given in the Gazette.

(*a*) This means the 'Edinburgh Gazette.' (*Vide* s. 10, *postea;* also Act 1856, s. 4, *antea.*)

IV. No part of the expense of any competition for the office of trustee shall be paid out of the estate, but all such expense shall be paid by the unsuccessful party to the successful party (*a*). Expense of competition for office of trustee.

N.B.—*The above section is substantially the same as s.* 54 *of* 2 *&* 3 *Vict. c.* 41, *on which the following cases were decided.*

1. Held competent for the Court, in awarding expenses to the successful party, to refuse such part of them as to which there may be any proper objection. (*Dyce,* 2d June 1847.)

2. In a competition which went to the Court of Session, and where neither party was entirely successful in their pleas, and no one was successful in the competition (it being held that there was no valid election), the Court awarded no costs. (*M'Farlane,* 29th Jan. 1848.)

3. The party successful in the competition held only entitled to modified costs, as he succeeded in the Court of Session on a plea which was not stated in the Sheriff Court. (*Menzies,* 5th June 1851.)

V. Any creditor, in order to be entitled to participate in a second or any subsequent dividend, shall produce his oath and grounds of debt as directed by the first-recited Act, in reference to the first dividend, at least two months before the period fixed for payment of such second or subsequent dividend (*a*). Oath, &c., to be produced to entitle creditor to a second dividend.

(*a*) *Vide* Act 1856, s. 123, *antea.*

VI. The procedure by the first-recited Act prescribed in reference to a second dividend shall be applicable in reference to subsequent dividends, so that a dividend may be made on the first lawful day after the expiration of every three months from the day of the payment of the immediately preceding dividend, until the whole funds of the bankrupt shall be divided (*a*). Procedure requisite in reference to subsequent dividends.

(*a*) *Vide* same Act, s. 132, *antea.*

VII. An abbreviate of the deliverance of discharge of the bankrupt, whether following on a composition or not, shall be issued by the Clerk of the Bills or the Sheriff Clerk in the Abbreviate of discharge of bankrupt to be

issued and recorded as in Schedule (A.)

form of the Schedule (A.) hereunto annexed, and the abbreviate shall be recorded in the Register of Inhibitions, and the Register of Abbreviates of Adjudications at Edinburgh, and the keepers of such registers shall, if required, grant certificates of such registration in the form annexed to the said abbreviate (*a*).

(*a*) *Vide* Act 1856, s. 140 & 147, *antea*.

Nothing in Sect. 7 of 19 & 20 Vict. c. 91 to exclude the application of provisions of 10 & 11 Vict. c. 50, and 17 & 18 Vict. c. 62, to heritable securities granted by the same.

VIII. Nothing contained in the seventh section of the last-recited Act shall be held to exclude the application of the provisions of an Act passed in the tenth and eleventh years of the reign of her present Majesty, intituled *An Act to facilitate the Constitution and Transmission of Heritable Securities for Debt in Scotland, and to render the same more effectual for the Recovery of Debts*, or of an Act passed in the seventeenth and eighteenth years of the reign of her present Majesty, intituled *An Act to extend the Benefits of Two Acts of Her Majesty relating to the Constitution, Transmission, and Extinction of Heritable Securities in Scotland*, to the heritable securities authorised to be granted by the said seventh section, but the said provisions shall be held to apply thereto.

Application of Sect. 10 of 19 & 20 Vict. c. 79.

IX. The tenth section of the first herein-before recited Act shall be taken to apply to actions and exceptions as well in the ordinary Court of the Sheriff as in the Court of Session.

Recited Acts, except as altered, to remain in force.

X. The recited Acts, excepting in so far as altered by this Act, shall be and remain in full force and effect, and shall be construed with this Act.

SCHEDULE (A.)

1. *Form of Abbreviate of the Deliverance of Discharge of Bankrupt.*

Abbreviate of Deliverance discharging [*Insert name*]

A. B. [*insert the bankrupt's name and designation*] *has* been discharged of all debts and obligations contracted by him, or for which he was liable at the date of the sequestration of his estates; [*if upon composition, add as follows:* "the said sequestration declared at an end, and the said (*name*) reinvested in his estates on composition of (*insert the amount*)"],

conform to deliverance by [*Lord Ordinary or Sheriff*]. Dated the day of One thousand eight hundred and and in terms of "The Bankruptcy (Scotland) Act, 1856," and "The Bankruptcy and Real Securities (Scotland) Act, 1857."

C. D. (Bill Chamber Clerk
or
Sheriff Clerk of).

[*Place and date.*]

2. *Form of Certificates of Registration of Abbreviate to be annexed to the Abbreviate.*

This abbreviate was presented by and recorded on the day of in the Register of Abbreviates of Adjudication at Edinburgh.

E. F., Keeper.

This abbreviate was presented by and recorded on the day of in the Register of Inhibitions at Edinburgh.

G. H., Keeper.

BANKRUPTCY (SCOTLAND) AMENDMENT ACT, 1860.

CAP. XXXIII.

An Act to amend certain Provisions in the Bankrupt Law of Scotland.—[3d July 1860.]

19 & 20 Vict. c. 79.

WHEREAS it is expedient that certain provisions of "The Bankruptcy (Scotland) Act, 1856," should be amended: Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

I. This Act may be cited as "The Bankruptcy (Scotland) Amendment Act, 1860."

Where it appears to Court of Session, &c., that the estate ought to be distributed in England or Ireland, sequestration may be recalled.

II. If in any case where sequestration has been or shall be awarded in Scotland it shall appear to the Court of Session or to the Lord Ordinary, upon a summary petition by the Accountant in Bankruptcy, or any creditor (*a*) or other person having interest, presented to either Division of the said Court or to the Lord Ordinary at any time within three months after the date of the sequestration (*b*), that a majority of the creditors (*c*) in number (*d*) and value residing in England or in Ireland (*e*) and that from the situation of the property of the bankrupt (*f*) or other causes his estate and effects ought to be distributed among the creditors under the bankrupt or insolvent laws of England or Ireland, the said Court in either Division thereof or the Lord Ordinary, after such inquiry as to them shall seem fit, may recall the sequestration (*g*).

(*a*) A qualified creditor. (*Vide* Act 1856, s. 49 and notes; also s. 8 of this Act.)

(*b*) *Vide* Act 1856, s. 42, *antea*, as to date of sequestration ; also s. 8 of this Act.

(*c*) 1. All are to be considered as creditors who have lodged oaths and satisfactory grounds of debt. (*Haines*, 31st Jan. 1862.)

2. The bankrupt cannot object to parties being reckoned as creditors who are given up by him as such in the state of his affairs, but his state does not prove in a question of recall that all who are there set forth by him as creditors are such. (*Haines, supra.*)

(*d*) Creditors are computed in number whether above £20 or not. (*Haines, supra.*)

(*e*) Where there were no creditors in Scotland, but some in England, while the majority were out of the United Kingdom altogether, held no ground of recall. (*Smith*, 6th Nov. 1869.)

(*f*) 1. Where a bankrupt's creditors were all resident in England, and his whole estates were situated there, and he had come to Scotland for the sole purpose of suing out sequestration, recall granted, and bankrupt found liable in modified costs. (*Smith*, 7th Dec. 1860.)

2. Recall granted with costs under similar circumstances, although, pending the process of recall, the bankrupt had obtained a discharge without composition. (*Brandon*, 9th Jan. 1861; *vide Haines, supra;* also *Cooper*, 23d Jan. 1878.)

(*g*) *Vide* Act 1856, s. 31, *antea*. Where recall is granted under this Statute, an entry is ordered to be made in the Register of Sequestrations and on the margin of the Register of Inhibitions, as in s. 31, *supra*. (*Brandon, supra.*)

Discharge of bankrupt may in certain cases be refused, although no opposition be made by creditors.

III. The said Court, in either Division thereof, or the Lord Ordinary, or the Sheriff, may refuse the application for the discharge of any bankrupt, although two years have elapsed from the date of the sequestration (*a*), and although no appearance or opposition shall be made by or on the part of any of the creditors, if it shall appear from the report (*b*) of the Accountant in Bankruptcy or other sufficient evidence that the bankrupt has fraudulently concealed any part of his estate or effects, or has wilfully failed to comply with any of the provisions of "The Bankruptcy (Scotland) Act, 1856."

(*a*) This means the actual awarding of the sequestration. (*Vide* Act 1856, s. 146, *antea ;* also s. 8 of this Act.) In *Millar*, 16th Nov. 1877, discharge refused, although ten years had elapsed, and although there was no opposition.

(*b*) *Vide* Act 1856, s. 146, note *i*, *antea*.

Interlocutors of Lord Ordinary or Sheriff subject to review.

IV. All interlocutors pronounced by the Lord Ordinary or the Sheriff under the provisions of this Act shall be subject to the review of the said Court of Session (*a*).

(*a*) *Vide* same Act, s. 170.

"Gazette" in said Act to mean

V. To remove doubts which have arisen, it is declared that the word "Gazette" in the sixty-seventh section of the said

'Edinburgh Gazette.'

Act shall be held to mean the 'Edinburgh Gazette;' and the provisions contained in the said Act relative to deeds of arrangement shall extend to and include settlements or arrangements by way of composition (*a*).

(*a*) *Vide* Act 1856, s. 38 and 67.

Fee to Sheriff abolished.

VI. The fee provided to be paid to the Sheriff under Schedule (I.) of the said Act is hereby abolished; but no claim shall exist in respect of any such fee which shall have been paid prior to the passing of this Act.

Fee payable to Sheriff for attendances, &c.

VII. For attending any meeting of creditors or examination a fee of one pound one shilling shall be payable to the Sheriff for each such meeting or diet of examination not being on the same day (*a*).

(*a*) Now repealed, 40 & 41 Vict. c. 50, s. 12.

Recited Act to remain in force.

VIII. "The Bankruptcy (Scotland) Act, 1856," except in so far as altered by this Act, shall be and remain in full force and effect, and shall be construed with this Act; and words interpreted in the said Act shall when used in this Act have the same meanings as are assigned to them respectively by the said Act (*a*).

(*a*) Act 1856, s. 4.

BANKRUPTCY (SCOTLAND) LAW AMENDMENT ACT, 1875.

CHAPTER XXVI.

An Act to amend the Law of Bankruptcy in Scotland.—
[29th June 1875.]

WHEREAS by section one hundred and twenty-two of the Bankruptcy (Scotland) Act, 1856, it is enacted that "the "wages of workmen and of clerks and shopmen and servants "employed by the bankrupt, where such wages do not exceed "sixty pounds per annum, shall be entitled to the same privi- "lege as the wages of domestic servants to the extent of a "month's wages prior to the date of sequestration being "awarded, or where sequestration is not awarded, prior to "the concourse of diligence for distribution of the estate of a "party being notour bankrupt:" 19 & 20 Vict. c. 79.

And whereas it is expedient to amend the said enactment:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same as follows:

I. This Act shall apply only to Scotland. Application of the Act.

II. The said recited section shall be and the same is hereby repealed. Repeal of 19 & 20 Vict. c. 79. s. 122.

III. From and after the passing of this Act, the wages of clerks and shopmen and servants employed by the bankrupt shall be entitled to the same privilege as the wages of domestic servants to an extent not exceeding four months' wages prior to the date of sequestration being awarded, or where sequestration is not awarded, prior to the concourse of diligence for distribution of the estate of a party being notour bankrupt, and not exceeding the sum of fifty pounds; and the wages of workmen employed by the bankrupt shall be similarly entitled to an extent not exceeding two months' wages prior to the same respective dates. Workmen's wages to be privileged.

EXCERPTS

FROM

ENGLISH BANKRUPTCY ACT.

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32 & 33 VICT. CAP. 71.

LXXIII. Any orders made by a Court having jurisdiction in bankruptcy in England under this Act, shall be enforced in Scotland and Ireland, in the Courts having jurisdiction in bankruptcy in such countries respectively, in the same manner in all respects as if such order had been made by the Courts, which are hereby required to enforce the same; and in like manner any order made by the Court in Scotland having jurisdiction in bankruptcy shall be enforced in England and Ireland; and every order made by the Court having jurisdiction in bankruptcy in Ireland shall be enforced in England and Scotland by the Courts respectively having jurisdiction in bankruptcy in the division of the United Kingdom, where the orders made require to be enforced, and in the same manner in all respects as if such order had been made by the Court required to enforce the same, in a case of bankruptcy within its own jurisdiction.

LXXIV. The London Bankruptcy Court, the Local Bankruptcy Court, the Courts having jurisdiction in bankruptcy in Scotland and Ireland, and every British Court elsewhere having jurisdiction in bankruptcy, or insolvency, and the officers of such Courts respectively, shall severally act in aid of, and be auxiliary to, each other in all matters of bankruptcy; and an order of the Court seeking aid, together with a request to another of the said Courts shall be deemed sufficient to enable the latter Court to exercise, in regard to the matters

directed by such order, the like jurisdiction which the Court which made the request, as well as the Court to which the request is made, could exercise in regard to similar matters within their respective jurisdictions.

LXXV. Any Court having jurisdiction in bankruptcy in England under this Act may, if it thinks fit, order that a person named in the order being in Scotland or in Ireland, shall be examined there.

LXXVI. Any warrant of a Court having jurisdiction in bankruptcy in England under this Act may be enforced in Scotland, Ireland, the Isle of Man, the Channel Islands, and elsewhere in her Majesty's dominions, in the same manner and subject to the same privileges in, and subject to which a warrant issued by any justice of the peace against a person for an indictable offence against the laws of England, may be executed in such countries respectively in pursuance of the Act of Parliament in that behalf; and any search warrant issued by a Court having jurisdiction in bankruptcy under this Act for the discovery of any property of a bankrupt may be executed in manner prescribed, or in the same manner and subject to the same privileges in and subject to which a search warrant for property supposed to be stolen may be executed according to law.

NOTES

ISSUED BY

THE ACCOUNTANT IN BANKRUPTCY,

FOR THE

GUIDANCE OF TRUSTEES IN SEQUESTRATIONS AWARDED UNDER THE BANKRUPTCY (SCOTLAND) ACT, 1856 (19 & 20 VICT. c. 79); THE BANKRUPTCY AND REAL SECURITY (SCOTLAND) ACT, 1857 (20 & 21 VICT. c. 19); AND THE BANKRUPTCY (SCOTLAND) AMENDMENT ACT, 1860 (23 & 24 VICT. c. 33).

WITH APPENDIX.

(1.) *Transmission to the Accountant of Copy of Act and Warrant confirming Trustee.*

The Act (1856) provides (s. 73) that, on the Sheriff Clerk issuing the act and warrant confirming the trustee, "the trus- "tee shall immediately transmit a copy of such act and war- "rant to the accountant." The accountant requests trustees to transmit copies of the acts and warrants, *certified by themselves*, that he may be assured of the accuracy of the copies sent.

(2.) *Making up Inventory and Valuation of Estate and Effects, and Transmission of Copies thereof to the Accountant.*

Under s. 80 of the Act, it is the duty of the trustee to take possession of the bankrupt's estate and effects, and of his title-deeds, books, bills, vouchers, and other papers and documents.

He is next required to make up an inventory of the estate and effects, and a valuation showing the estimated value, and the annual revenue thereof.

Where separate inventories and valuations of particular portions of the estate, such as household furniture, stock-in-trade, &c., have been obtained, it will be sufficient, in preparing the inventory and valuation of the whole estate, if such separate valuations are referred to for the particulars embraced in them. References to subsidiary inventories and valuations should show the name and designation of the party by whom they were made, and also their dates.

The trustee is directed "forthwith to transmit copies of "such inventory and valuation to the accountant." The copies transmitted ought to be attested by the trustee.

When the sequestration embraces the estates of a company and the estates of individual partners, it is necessary that these estates should be kept distinct in the inventory and valuation.

The inventory and valuation required, is an inventory and valuation, *in gross*, of the estate and effects of the bankrupt, whether affected by special securities or burdened by the mass of his debts. It is quite proper to note, in the inventory and valuation, the securities which are known or suspected to burden particular assets. The secured debts ought not, however, to be given effect to by excluding the subjects burdened, in whole or in part, from the estimated amount of the estate.

A form of inventory and valuation is appended.

(3.) *Examination of the Bankrupt, and of others who can give information relative to the Estate.*

The provisions applicable to this examination will be found in s. 87 to 95 inclusive, of the Act of 1856.

Besides affording all necessary information in regard to the position of the bankrupt's affairs at the date of the sequestration, the examination ought to disclose the causes of the bankruptcy, where these are not set forth by the bankrupt in his state of affairs, so that parties interested may be able to ascertain, from one or other of these sources, whether the bankruptcy has arisen from innocent misfortunes or losses in business, or from culpable or undue conduct (see s. 146 of the Act of 1856). If more than one of these causes have operated to bring about the result of bankruptcy, the examination and state ought to make it clear, in so far as practicable, to what extent the deficiency has been created by the separate operation of these respective causes.

For example, where there are assets, say of				£500	0	0
And the liabilities are, say . . .				1000	0	0
Amount of deficiency,				£500	0	0
This might be explained as follows:—						
From losses in business arising from bad debts, say	£100	0	0			
„ losses on raising money by accommodation bills, say	100	0	0			
„ losses on speculation in dealing in stocks and shares, say . .	100	0	0			
„ losses arising from pawning or selling goods by auction, out of the ordinary course of trade,	100	0	0			
Extravagance arising from expense of living not met by the returns or profits of business, say	100	0	0			
				£500	0	0

Where it is impossible to give an account of the deficiency in figures by reason of the failure of the bankrupt to keep books, this should be brought out distinctly in the examination.

Where the causes of bankruptcy have been satisfactorily disclosed by the bankrupt by explanations given to the trustee personally, it may not be necessary to bring out these explanations in the public examination of the bankrupt, but the trustee ought to minute such explanations either in his report to the second meeting of creditors or otherwise, so that they may appear in the record in the sederunt-book.

It occurs in some sequestrations that the bankrupt has been engaged in concocting claims by false entries in books, or by fictitious accounts and vouchers. It also not unfrequently occurs that the bankrupt has given fraudulent preferences to creditors, which may be set aside. In either of these cases the examination ought to bear fully and distinctly upon such transactions.

The examination, state of affairs, and explanations are of the utmost importance, as forming the foundation of the trustee's report to the second meeting of creditors (s. 96 of the Act of 1856), and of his report on the bankrupt's conduct (s. 146 of the same Act).

If the bankrupt has been guilty of fraudulent conduct, for which he may be prosecuted criminally, these documents ought to disclose the particulars of the offences with which

he is chargeable. They ought also to bear evidence on the subject of the fraudulent concealment of effects or other elements in the bankrupt's trading or conduct which are material in the consideration of his right to discharge, under the provisions both of the Bankruptcy (Scotland) Act, 1856, s. 146, and of the Bankruptcy (Scotland) Amendment Act, 1860, s. 3.

In examining the bankrupt, the trustee ought to keep in view that the bankrupt is entitled to refuse to answer questions tending to criminate himself.

(4.) *The Trustee's Report to the Second Meeting of Creditors.*

This report is required under the 96th section of the Act of 1856. It involves necessarily a state of the bankrupt's affairs, and an estimate of what the estate may produce; and it is also an appropriate medium for communicating with the creditors on the subject of any matters relating to the administration and management, in regard to which the trustee may require their directions, under the 82d section of the same Act, or for submitting to them any facts connected with the bankrupt's conduct, which he desires to bring before them.

(5.) *Making up Accounts, Audit thereof, and Transmission of Copies to Accountant.*

It is enacted (s. 84) that the trustee "shall also keep regular "accounts of the affairs of the estate, and transmit to the "Accountant in Bankruptcy, before each of the periods herein "assigned for payment of a dividend, a copy, certified by "himself, of such accounts, in so far as not previously trans-"mitted."

In s. 125, 130, and 132, the accounts, and the periods at which these are to be made up, are specified. These periods are—

1st, At the end of four months from date of award of sequestration.

2d, At the end of eight months from do.

3d, At the end of eleven months from do.; and

Each succeeding account at the end of three months from the close of the immediately preceding account. (See Bankruptcy and Real Securities (Scotland) Act, 1857, s. 6.)

It may be useful for trustees to present their accounts of intromissions in a classified form; but, under any circumstances, it is proper that the trustee should present the accounts of intromissions in the form of an account-current or progressive state, showing the state of the balance from day to day. It is provided by the Act (1856, s. 125) that the trustee shall, along with his account of intromissions, make up a state

of the whole estate of the bankrupt, of the funds recovered by him, and of the property outstanding (specifying the cause why it has not been recovered). The forms of a progressive state, and of a state of the whole estate recovered and outstanding, are appended.

The duties of the commissioners, in relation to the audit of the accounts, are set forth in separate notes issued by the accountant for their guidance.

Trustees are directed by the Act (1856) to transmit to the accountant copies, *certified by themselves*, of their accounts *before* each of the periods assigned for payment of a dividend. The periods for payment of dividends are assigned in s. 129, 131, and 132 of that Act; and copies of the accounts ought to be transmitted before these periods, whether a dividend has been declared or postponed. The periods before which copies of the trustee's accounts ought to be transmitted to the accountant, unless these periods are altered as under mentioned, are—

First account, before the end of six months from the date of *awarding* sequestration.

Second account, before the end of ten months from do.

Third account, before the end of thirteen months from do.; and

Each succeeding account before the end of three months from the preceding period for transmission.

The periods for payment of dividends may be accelerated or altered in certain cases (s. 133 and 135). When these are accelerated or altered, the periods for transmitting the accounts to the accountant must necessarily be changed. Trustees are requested to intimate the acceleration or alteration to the accountant, that he may make the proper entries in his books.

Where the sequestration embraces both the company's and individual partners' estates, it is *essential* that the intromissions with these be kept separate and distinct.

In cases of sequestrations wound up under composition-contracts, the trustee ought to transmit to the accountant, at the proper periods as above—

1. Copies of his accounts, certified by himself, brought down to the statutory periods (for making up such accounts) which may have occurred before the composition shall have been approved of; and,

2. Copy of his final account, brought down from the previous statutory period to the close of the sequestration.

It is provided (s. 84) that the accounts shall be patent to the commissioners, and to the creditors or their agents, at all times.

(6.) *Division of the Prices of Heritable Estates belonging to Bankrupts.*

The trustee may sell the heritable estate—

1. With concurrence of the heritable creditors (s. 113); or,
2. Without such concurrence, on certain conditions (s. 114).

It appears to the accountant that in either of these cases the trustee ought, in terms of s. 116, "to make up a scheme "of ranking and division of the claims of the heritable creditors and other creditors on the price of the heritable estate "sold; and such scheme of ranking and division shall be "reported by him to the Lord Ordinary or either Division of "the Court of Session; and the judgment thereon shall be a "warrant for payment out of the price against the purchaser "of the heritable estate."

(7.) *Provisions in regard to Sale of Heritable Estate by Private Bargain.*

It is provided by s. 115 that "it shall be competent for the "trustee, with concurrence of a majority of the creditors in "number and value, and of the heritable creditors, if any, and "of the accountant, to sell the heritable estate by private "bargain, on such terms and conditions regarding price and "otherwise as the trustee, with concurrence of those parties, "may fix."

The trustee will be required by the accountant to prove (1) that he has fairly ascertained the value; (2) that the commissioners approve of the transaction; and (3) that the sale, and the terms and conditions, are concurred in by the majority of the creditors in number and value, and by the heritable creditors, if any.

If the trustee satisfy the accountant on these heads, the accountant will pronounce an order granting his concurrence, which may be used as part of the title. The accountant does not consider it expedient that he should become a party to the disposition to the purchaser.

(8.) *Deposit of Money in Bank.*

It is enacted (s. 82) that the trustee "shall lodge all money "which he shall receive in such bank as the majority of the "creditors in number and value at any general meeting shall "appoint, and failing such appointment, in any joint-stock "bank of issue in Scotland, provided that the bank be not "one in which the trustee shall be an acting partner, man-"ager, or cashier; and the money shall be lodged in name of "the trustee, in his official character under this Act, at the "highest rate of interest which can be procured for the same."

The penalties for failure in this duty are: (1) (by s. 83) "If "the trustee shall keep in his hands any sum exceeding £50 "belonging to the estate for more than ten days, he shall pay "interest to the creditors at the rate of £20 per centum per "annum on the excess of such sum above £50, for such time "as the same shall be in his hands beyond ten days; and "unless the money has been so kept from innocent causes, "the trustee shall be dismissed from his office upon petition "to the Lord Ordinary or Sheriff by any creditor, and have no "claim to remuneration, and shall be liable in expenses;" and (2) by the 159th section the failure in duty may be reported by the accountant to the Court, who shall have power to censure such trustees, or remove them from their office, or otherwise deal with them as the justice of the case may require.

The Court of Session has found (*Freyd's Trustee*, 30th June 1864) that the fund set apart by the commissioners for the payment of a dividend forms part of the funds of the sequestrated estate, and is subject to the provisions before quoted as to the lodging of the monies of the estate in bank. According to this decision, the trustee is not entitled to withdraw from bank the amount set apart for payment of a dividend at the time at which it is payable, but only to draw from time to time such sums as may be required to meet the payments to the creditors as they claim their dividends. If a trustee hold in his hands monies of the estate (whether set apart for dividends or not) beyond the limit prescribed by the section of the Act before quoted, he is liable to the penalties thereby imposed.

(9.) *Annual Returns to be made to the Sheriff Clerks.*

It is enacted as follows (s. 158): "Each trustee shall, "within fourteen days after the 31st October in each year, "or on the first lawful day after the expiry of the said four-"teen days, deliver, free of expense, to the Sheriff Clerk of "the county, a return in the form of Schedule (H.) hereunto "annexed, of every sequestration of which he is trustee." . . . . "And any trustee who shall fail to make such "return shall be removable from his office at the instance of "any one creditor, or of the accountant, or subject to such "censure as the Lord Ordinary may think suitable, and be "found liable in expenses."

The accountant is in the practice of issuing annually, at the proper period, forms explaining the mode in which these returns ought to be made up.

In cases where the estates of a company and those of the

individual partners are embraced, care must be taken to keep these estates distinct in the return.

The trustee's return is of special importance, as affording the creditors information regarding the progress of the winding up, and as furnishing materials for the accountant's annual report to the Court of Session.

(10.) *The Sequestration Sederunt-Book.*

It is the duty of the trustee to keep the sederunt-book, which it is provided shall be patent to the commissioners and to the creditors or their agents at all times (see s. 84).

There are certain documents and records which the Act requires to be engrossed in the sederunt-book:—

1. The election of the commissioners, which is to be declared by a deliverance of the Sheriff in the sederunt-book (s. 75).
2. An entry is to be made by the trustee of the production to him by creditors of their oaths and grounds of debt (s. 50).
3. The intimation of the recall of a mandate by a creditor in favour of a commissioner is to be recorded (s. 75).
4. The state of affairs made up by the bankrupt is to be engrossed (s. 81).
5. The oath which the bankrupt is required to make before the close of his examination must be engrossed (s. 95).
6. The minutes of creditors and of commissioners, states of accounts, reports, and all proceedings necessary to give a correct view of the management of the estate, must be recorded (s. 84).
7. The commissioners are required to certify, by a writing under their hands, engrossed or copied in the sederunt-book, the balance due to or by the trustee in his account with the estate, as at the expiration of the periods at which the trustee's accounts are ordered to be made up (s. 125); and
8. In cases of settlements by composition, the circular-letter and the abstract state of affairs and valuation of the estate, which the trustee is required (s. 137 and 139) to send to the creditors previous to the meeting at which the offer of composition is to be decided on, ought to be engrossed in the sederunt-book.

The accountant is empowered (s. 160) to require *exhibition* of the sederunt-book.

(11.) *Trustee's Discharge.*

The trustee must, before his discharge, transmit the sederunt-book to the accountant.

Where the last return made to the Sheriff Clerk (s. 158) does not contain the results of the whole accounting, the

trustee is requested to transmit to the accountant, either in a separate form or engrossed in the sederunt-book, a continuation of the return, embracing the results of his whole intromissions, under the proper heads given in the statutory form of the return. He must also transmit a continuation of his accounts from the statutory period immediately preceding, down to the actual close of his accounts.

The trustee must deposit the unclaimed dividends in bank, and transmit the bank deposit-receipt to the accountant, in terms of s. 153. A form of a deposit-receipt for unclaimed dividends is subjoined.*

On obtaining his discharge, he is forthwith to transmit to the accountant an extract of the decree of discharge, in terms of s. 152.

The transmission of the sederunt-book before the trustee's discharge is required from *every* trustee in any sequestration (s. 153). There is no distinction made regarding this duty, between sequestrations wound up by composition, and those wound up by a division of the funds.

(12.) *Trustee's Report on the Bankrupt's Conduct.*

The trustee may be required by the bankrupt to prepare this report under the provisions of the 146th section of the Bankruptcy (Scotland) Act, 1856. It must be produced in the proceedings for the bankrupt's discharge, in terms of that section, and it is also evidence which may be founded on under the provisions of the 3d section of the Bankruptcy

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* *Form of Deposit-Receipt for Unclaimed Dividends.*

£ (Date)

Received from A. B., trustee on the sequestrated estate of C. D., the sum of , being the amount of dividends unclaimed in this sequestration, conform to list annexed, which is carried to the "Account of Unclaimed Dividends" in the books of the bank, in terms of the Bankruptcy (Scotland) Act, 1856, s. 153.

(Signature of Bank Officer.)

List of Unclaimed Dividends referred to in the foregoing Receipt.

Names and Designations of Creditors entitled to Dividends.	Amount of Claims.	Particulars of Dividends.	Amount Deposited.
A. B., Merchant in C. D.,	£	3d Dividend, being at the rate of per pound on ordinary claims.	£

(Scotland) Amendment Act, 1860. The 146th section of the Act of 1856 specifies the particulars of the bankrupt's conduct upon which the trustee is required to report. It may be possible, in some cases, to adopt in this report the very words of the Act; but these words ought to be employed with caution, and where there are any peculiar circumstances connected with the conduct of the bankrupt or the causes of the bankruptcy (such as fraudulent concealment of estate or effects, refusal to comply with the provisions of the Bankruptcy Act, reckless trading, betting, gambling, or extravagance), these ought to be clearly brought out. If the trustee should report generally in the words of the Statute in a case where there were, in point of fact, elements which ought to have been set forth specially for the information of the judge in dealing with the bankrupt's application for discharge, he may be called on afterwards in Court to justify his report.

The accountant would suggest that the want of proper business books is a matter which ought to be noticed in this report.

It has already been suggested in these notes, that the examination of the bankrupt, and of others who can give information relative to the estate, the bankrupt's state of affairs, and the explanations which the bankrupt may have given the trustee, afford the materials upon which this report ought to be based.

(13.) *Cases of Fraudulent Conduct on the part of the Bankrupt.*

The accountant refers to the 162d section of the Act, which provides, that if the accountant shall possess information which shall lead him, on reasonable grounds, to suspect fraudulent conduct by the bankrupt, such as may infer punishment, "he shall be entitled to give information to her "Majesty's Advocate, who shall direct such inquiry, and "take such proceedings therein, as he shall think proper." If cases of fraudulent conduct are brought under the notice of the accountant, he will be prepared to act under the powers thus conferred on him.

Office of Accountant in Bankruptcy,
Nos. 30 and 32 New Register House, Edinburgh.

APPENDIX.

No. I.

Form of Inventory and Valuation.

Inventory and valuation of the estate and effects belonging to A. B., bookseller, stationer, and bookbinder in C., sequestrated on 1st December 1856, made up by E. F. [*designation*] in G., trustee on his sequestrated estate, showing also the annual revenue thereof, in terms of the Bankruptcy (Scotland) Act, 1856, s. 80.

I. Real or heritable estate in Scotland :—

Dwelling-house, with shops in Street, , yielding a gross rental of £100 per annum, conform to rental annexed, and valued by A. B., builder in , as per valuation, dated at , ... £1200 0 0

It is stated by the bankrupt that this property is burdened with a debt, heritably secured, amounting to £700. The right of the heritable creditor to a preference has not yet been investigated.

II. Stock in trade—viz.

Stationery, per inventory and valuation of , bookseller and stationer in , dated 16th December 1856, . .	£580	16	8	
Books, per do. do. .	360	7	6	
Tools and other materials used in binding, per do. do. .	255	17	5	
				1197 1 7

Note.—Messrs G. & H., publishers in , claim a security or lien over part of the stock. The amount of the debt in respect of which they claim this security or lien has not been ascertained. This claim is subject to inquiry.

III. Book debts, as appearing on the bankrupt's books—viz.

Folios of Bankrupt's Ledger.	Considered by Trustee to be Bad.			Doubtful.			Good.			
16. John Thomson, merchant in ,	£0	0	0	£0	0	0	£75	16	8	
31. William Jones, grocer in ,	0	0	0	0	0	0	5	2	6	
7. Thomas Johnson, bookseller ,	0	0	0	3	1	2	0	0	0	
35. Andrew Smith, bookseller, . .	15	0	0	0	0	0	0	0	0	
15. Thomas Brown, merchant in ,	0	0	0	0	0	0	30	2	6	
30. Thomas Thomson, bookseller in ,	0	0	0	16	8	4	0	0	0	
Carry forward,	£15	0	0	£19	9	6	£111	1	8	£2397 1 7

Folios of Bankrupt's Ledger.		Considered by Trustee to be Bad.	Doubtful.	Good.	
	Brought forward,	£15 0 0	£19 9 6	£111 1 8	£2397 1 7
56.	W. Anderson, grocer in ,	0 0 0	8 2 4	0 0 0	
73.	Alexander Forbes, innkeeper in ,	6 8 2	0 0 0	0 0 0	
84.	William M'Leod, grocer in ,	3 5 6	0 0 0	0 0 0	
	Amount of debts considered good, valued at 20s. per £			£111 1 8	
	Amount of debts considered doubtful		£27 11 10		
	Value at 10s. per £			13 15 11	
	Amount of debts considered bad and of no value	£24 13 8			
					124 17 7

IV. Other debts which do not appear in the bankrupt's books, but which have been ascertained by the trustee to be due—viz.

James Johnston, tenant of the bankrupt's house, arrear of rent due at Whitsunday last	£25 0 0	
Balance due to the bankrupt on a deposit account in his name with the Bank, in , as at the date of his sequestration, Dec. 1, 1856	39 14 6	
Cash in the hands of the bankrupt's cashier	5 0 0	
		69 14 6

V. Stock and shares of joint-stock companies:—

Twenty shares in the Gas Company, at £5 each, paid up, valued at £1 premium, the selling price at the date of sequestration	120 0 0

VI. Household furniture in the bankrupt's house, No. Street, conform to inventory and appraisement of C. D., licensed appraiser, dated 14th December 1856 . . . . . 165 8 4

Amount, £2877 2 0

(Signed) E. F., *Trustee.*

Date)

STATEMENT of the annual revenue derivable from the estate belonging to A. B., bookseller, stationer, and bookbinder in C., sequestrated on 1st December 1856.

1. Gross rental of dwelling-house and shops included in the foregoing inventory and valuation for the year now current, ending at Whitsunday 1857, and payable at Martinmas 1856 and Whitsunday 1857 in equal portions—viz.

Dwelling-house No. 17 of Street, Glasgow, consting of second flat, let to James Johnstone . .	£35 0 0
Brought forward,	£35 0 0

Carry forward,	£35	0	0		
Large shop, &c., let to William George, grocer . . .	55	0	0		
Cellar below shop occupied by John Williams	10	0	0		
				£100	0	0

2. Revenue derivable from shares in joint-stock companies:—
   Estimated dividend from 20 shares of Gas Company, at 6 per cent on the paid-up capital (£5 per share), being the rate of dividend declared for previous year 6 0 0
   The other estate and effects of the bankrupt yield no revenue

Amount, £106 0 0
(Signed) E. F., *Trustee.*

INVENTORY of the title-deeds, books, bills, vouchers, and other papers and documents belonging to the sequestrated estate of A. B., bookseller, stationer, and bookbinder in C.

1. TITLE-DEEDS:—
   Title-deeds of the bankrupt's dwelling-house and shops in Street, , consisting of 20 writs, conform to particular inventory found in the bankrupt's premises.
   Note.—The title-deeds themselves are in the hands of , writer in , the agent for the heritable creditor, as appears from a receipt appended to the inventory.
2. BOOKS:—
   1. Cash-book, commencing 29th May 1851, ending 3d July 1855.
   2. Do. commencing 4th July 1855, ending 28th October 1856.
   3. Day-book, commencing 29th May 1851, and ending 28th October 1856.
   4. Ledger, for period from do. to do.
   5. Bank Pass-book, with Bank, commencing 1st January 1853; last entry, 20th September 1856.
   6. Invoice-book, 24th September 1854 to 24th September 1856.
3. OTHER DOCUMENTS:—
   1. Receipt by Gas Company for third call, paid in September 1855.
   2. Certificate of shares of gas stock, in name of bankrupt, dated .
   3. Inventory of the bankrupt's title-deeds, with receipt for these titles, by , writer in , dated , appended thereto.

(Signed) E. F., *Trustee.*

Observation by the Accountant.—The Act does not provide that the trustee shall make up an inventory of the title-deeds, &c. It is desirable, however, that where there are such deeds or other documents of importance, they should be inventoried by the trustee. Such an inventory may be useful for reference on the part of creditors, or others interested in the estate, and it should serve to ascertain the extent of the trustee's responsibility in connection with the bankrupt's papers. This observation does not apply to unimportant documents.

No. II.

FORM OF ACCOUNT-CURRENT or progressive state of the trustee's intromissions, exhibiting the balances from day to day, both on the trustee's account and on the account kept by him for the estate in bank.

TRUSTEE *Dr.* or *Cr.*

Dates.				State of Bank Account.	State of Trustee's Account.
1856, Dec. 14.	*Dr.*	Received cash in bankrupt's desk . . .			£5 0 0
„	„	Received balance in bankrupt's deposit-account .			39 14 6
					£44 14 6
„	*Cr.*	Paid into bank account .		£40 0 0	40 0 0
					£4 14 6
„ 20.	*Dr.*	Received arrears of rent due by James Johnstone .	£25 0 0		
„	„	Half-year's rent to Martinmas from do. .	17 10 0		
„	„	Do. from William George for shop	27 10 0		
„	„	Do. from J. Williams for cellar	5 0 0		
					75 0 0
					£79 14 6
„	*Cr.*	Paid into bank . .		75 0 0	75 0 0
				£115 0 0	£4 14 6
„ 30.	*Dr.*	Received from John Thomson, debt due by him .	£75 16 8		
„	„	Received from Wm. Jones, do.	5 2 6		
			£80 19 2		
„	*Cr.*	Paid interest on heritable debt	14 0 0		
					66 19 2
					£71 13 8
„	„	Paid into bank . .		66 0 0	66 0 0
				£181 0 0	£5 13 8
„ 31.	*Dr.*	Received proceeds of household furniture, sold by J. Williams, auctioneer .			150 8 4
					£156 2 0
„	*Cr.*	Paid into bank . .		150 8 4	150 8 4
		Carry forward,		£331 8 4	£5 13 8

Dates.			State of Bank Account.	State of Trustee's Account.
		Brought forward,	£331 8 4	£5 13 8
1857, Jan. 3.	*Dr.*	Received dividends on gas shares, payable at Christmas 1856 . £3 0 0		
„	„	Price of gas shares sold . 126 0 0		
				129 0 0
				£134 13 8
„	*Cr.*	Paid into bank . .	126 0 0	126 0 0
			£457 8 4	£8 13 8
„ 16.	*Dr.*	Received from W. Anderson, amount of debt due by him		8 2 4
				£16 16 0
„	*Cr.*	Paid into bank . .	15 0 0	15 0 0
			£472 8 4	£1 16 0
„ 31.	*Dr.*	Received per draft on bank account . . .	20 0 0	20 0 0
			£452 8 4	21 16 0
„	*Cr.*	Paid to account of allowance to bankrupt . .		20 0 0
				£1 16 0
Feb. 2.	*Dr.*	Received per draft on bank account . . .	10 0 0	10 0 0
			£442 8 4	£11 16 0
„	*Cr.*	Paid burdens and taxes, forming charges against house-rent . . .		9 6 0
				£2 10 0
April 1.	*Dr.*	Received per draft on bank account . . .	30 0 0	30 0 0
			£412 8 4	£32 10 0
„	*Cr.*	Paid balance of allowance to bankrupt . £13 12 0		
„	„	Account for law expenses as taxed . 16 12 0		
				30 4 0
Balance in bank at 2d April 1857, exclusive of interest from commencement of account, to be ascertained at the end of the year .			£412 8 4	
Balance in the trustee's hand at 2d April 1857 .				£2 6 0
Add balance in bank as above . . .				412 8 4
Total balance of realised funds in favour of the estate, as at 2d April 1857 . . .				£414 14 4

(Signed) E. F., *Trustee.*

No. III.

FORM OF STATE OF THE WHOLE ESTATE of the Bankrupt as at 2d April 1857.

I. *Funds recovered.*

1. Estate embraced in the trustee's inventory and valuation:—						
(1.) Book debts, as appearing on the bankrupt's books .					£89	1 6
Whereof given up as *good* .	£80	19	2			
„ formerly considered *doubtful*, but recovered in full .	8	2	4			
As above,	£89	1	6			
(2.) Other debts ascertained by the trustee to be due, forming Branch IV. of the trustee's inventory, recovered in full					69	14 6
(3.) Price of shares in Gas Company sold for					126	0 0
(4.) Proceeds of household furniture sold . .					150	8 4
					£435	4 4
2. Estate accrued since the trustee's inventory was made up:—						
Rents of property for half-year to Martinmas 1856	£50	0	0			
Dividend on gas shares at Christmas 1856	3	0	0			
					53	0 0
Amount,					£488	4 4
Note.—The amount of the funds recovered is as above .					£488	4 4
Out of which the following payments have been made:—						
Allowance to bankrupt . .	£33	12	0			
Interest, burdens, and taxes affecting heritable property . .	23	6	0			
Law expenses . . .	16	12	0			
Total,					73	10 0
Remains balance of realised funds in favour of the estate at 2d April 1857, as before .					£414	14 4

II. *Property outstanding* (specifying the cause why it has not been recovered).

1. Dwelling-house and shop, as given up in the trustee's inventory and valuation, at . .	£1200	0	0			
Note.—This property was exposed to public sale on 15th March last, after due previous advertisement, at the above sum, but no offerer appeared. It will be again offered for sale on the 10th current, at the reduced upset price of £1100, in terms of a resolution of the commissioners.						
The trustee in the meantime retains his original valuation					£1200	0 0
2. Stock-in-trade given up in trustee's inventory at	£1197	1	7			
Carry forward,					£1200	0 0

				Brought forward,	£1200	0 0
After some delay, granted at the request of the bankrupt, in order to give him an opportunity of furnishing an adequate offer of composition, with satisfactory caution, the trustee, with advice of the commissioners, advertised this portion of the estate for sale, and it has now been sold at the price of £1030, which is payable in one sum at Whitsunday next, say					1030	0 0
3. Book debts:—						
The trustee has been in correspondence with all the debtors, with the view of obtaining payment of their debts.						
No portion of the debts which were given up in his inventory as *bad* has been recovered, and, in the circumstances of the debtors, the trustee does not anticipate that anything will be derived from this source.						
Of the debts given up as *doubtful*, two are outstanding—						
(1.) Thomas Thomson . . .			£16	8 4		
This party has granted his bill, dated 1st March last, at 4 months, for the above sum.						
(2.) Thomas Johnson . . .			3	1 2		
This debtor refuses or delays payment, without advancing any satisfactory reason, and the trustee proposes to prosecute the debtor. The trustee meanwhile repeats his valuation of the above debts at 10s. per £ . .			£9	14 9		
The only debt given up as *good* which is now outstanding is—						
Thomas Brown . .	£30	2 6				
The trustee expects to obtain payment of this sum in full on an early date. *Inde* .			£30	2 6		
					39	17 3
				Amount of property outstanding,	£2269	17 3
Note.—The amount of the estate on the footing of the inventory and valuation is . . .					£2877	2 0
The amount of funds actually recovered is as before . .			£488	4 4		
The amount of the property outstanding is as before . . .			2269	17 3		
					2758	1 7
				Difference,	£119	0 5
Which has arisen thus:—						
The stock-in-trade, according to the inventory and valuation, was estimated to realise			£1197	1 7		
It has been sold for . .			1030	0 0		
				Depreciation on stock,	£167	1 7
				Carry forward,	£167	1 7 £119 0 5

	Brought forward,			£167	1	7	£119	0 5
The household furniture was estimated to realise . .	£165	8	4					
The proceeds as received were . . .	150	8	4					
Depreciation,				15	0	0		
	Total depreciation,			£182	1	7		
On the other hand—								
The gas shares realised	£126	0	0					
While they were valued at . . .	120	0	0					
	Increase,	£6	0	0				
The debt due by W. Anderson (£8, 2s. 4d.), which was valued at 10s. per £, has been recovered in full—*inde* increase . .	4	1	2					
The estate accrued from rents and dividend since the trustee's inventory was made up, is as before, in No. 2 of the *Funds recovered* .	53	0	0					
Total increase,				63	1	2		
	Difference as above,						£119	0 5

N.B.—It will be found, both by trustees and commissioners, beneficial to contrast periodically the results of the winding up as it progresses, with the estimate of the estate which was originally formed in the inventory and valuation. This note suggests the form in which such contrast may be readily made.

FORM OF SCHEDULE, WITH EXPLANATORY

ANNUAL RETURN to the SHERIFF-CLERK of the County o
Trustee on the Sequestrated Estate of A. B

Name and Designation of Bankrupt.	County and Place.	By whom Sequestration awarded	Name and Designation of Trustee.	Names and Designations of Commissioners.	Amount of Funds as in the Bankrupt's State.	Amount of Funds realised.	Amount of Debts.
A. B. (*designation*) in C. D.	County of H. Place C. D.	Court of Session *or* Sheriff of ——— *as the case may be.*	E. F. (*here give profession, trade, or occupation*) in G.	(1.) M N, merchant in (2.) O P., bookseller in and (3.) R. S., bookseller in	£3960 8 9 *Notes.* — (1.) The amount stated ought to be the *gross* amount of the funds in the bankrupt's state, without deduction of heritable or other preferable debts, expenses, &c. (2.) In the case of a deceased bankrupt, the trustee may insert, "No state — bankrupt deceased." (3.) In the case of the bankrupt having failed to deliver a state, the trustee may explain thus: — "No state — bankrupt failed to deliver a state of his affairs;" or give any other explanation suited to the circumstances of the case.	£2101 1 6 *Note.* — The trustee ought to give here the *gross* amount of his receipts from all quarters, as appearing from his accounts.	Debts as in *bankrupt's state*:— Secured or preferable, £ Unsecured or ordinary, Contingent, ... Amount, £ Debts as *ascertained or ranked by trustee*: — Secured or preferable, £ Unsecured or ordinary, Contingent, ... Amount, £ *Note.*—The *secured* or *preferable* debts include all debts *admitted as entitled to be paid in full*. For example, heritable debts, current rents, taxes, preferable wages, advances on security of goods and pledges, and debts secured by inhibitions, or by poindings executed 60 days before notour bankruptcy. The *unsecured* or *ordinary* debts include *all claims ranked for the ordinary dividends only*. Among these may be noted— Wages not preferable, balances of heritable debts left unpaid after sale of the property, balances of rents or other claims after realisation of the furniture or goods under hypothec or lien, &c. The *contingent* debts include all claims which are ranked or admitted subject to contingencies. Such are claims for family provisions to wives and children under marriage contracts or settlements, and for all other debts which are exigible on the occurrence of particular events.

Note. — Where the sequestration embraces the estates of a *Company*, and of the individual partners a should be returned, so as to present distin

General observations. — The Accountant in Bankruptcy thinks it proper to explain to make to the Court of Session. It is his purpose, in reporting to the Court, to give inf ascertained by the *trustee*, by contrasting the amount of *debts*, secured and unsecure (2.) To give a view of the progress which has been made in the recovery and application other the *payments* and *charges*, properly classified, and exhibiting the *balance*; and, (contrasting the *gross* amount of each *estate*, as appearing from the trustee's inventory a the amount *divided* amongst the creditors.

The returns of the trustees, and the inventories and valuations, ought to affo if they fail to give him the necessary information, he may be compelled to issue orders readily with the information required, and thus prevent the necessity of recourse being h

NOTES, ISSUED BY THE ACCOUNTANT IN BANKRUPTCY.

H., by E. F. (*here give Profession, Trade, or Occupation*) in G., (*Designation*) in C. D., at 31st October 1877.

Allowance to Bankrupt.	Discharge on Composition or without Composition.	Amount of Composition, and when payable, and Names and Designations of Cautioners.	Dividend Paid or Unpaid.	Amount of Expenses.		
				Trustee's * Commission.	Law Expenses.	Miscellaneous.
At rate of £1, 11s. 6d. per week from (*date*) to (*date*), amount £49, 7s. *Note.*—Where no allowance is given, the column may be left blank.	Bankrupt not discharged. No composition. *Note.*—In cases of composition, say— "Bankrupt discharged (*date*), on composition.	No Composition. *Note.*—In case of a composition, it may be stated thus:— "Composition per pound, free of expenses, payable in equal instalments at 3, 6, and 9 months after discharge.—A. B., merchant in C., cautioner for the composition."	Paid. Secured or preferable debts paid, £857 0 0 Dividend at per pound on unsecured or ordinary debts paid, . . . 228 1 6 £1085 1 6 Unpaid. Dividend on £ of ordinary or unsecured debts unpaid, £24 1 6 Dividend or sum set apart for contingent debts, . . . £ *Note.*—If any secured or preferable debts be unpaid, the amount ought to be stated in this place.	£21 0 0	£28 0 0	£13 9 10

Notes.—(1.) In case the expenses are only partially paid, the trustee ought to distinguish the amount *paid* from the amount *still due.*

(2.) No preferable debts, such as wages, rent, taxes, &c., due by the bankrupt, ought to be included among the miscellaneous charges. They ought to be embraced in the preceding column (*dividend paid or unpaid.*)

(3.) If the trustee has incurred any *extraordinary* expenses in the shape of wages or other charges for keeping up a business, completing a contract, &c., they ought to be distinguished, in stating the miscellaneous expenses, thus:—

Miscellaneous expenses. — Ordinary, such as travelling charges, auctioneer's fees, expense of advertising, postages, and incidents, £
Do., Extraordinary (describing them generally), . .

Total, £

* Fee to Factor (where any) to be included in above.

partners and as individuals, it is necessary that the particulars applicable to these estates respectively views of the position of the *separate* estates.

Trustee.

trustees that their returns furnish materials for the annual report which he is required nation under the following heads: (1.) To give the state of the bankrupt's affairs, as with the *gross* amount of the *estate* as appearing in the trustee's inventory and valuation; the funds, showing, on the one hand, the amount of the trustee's *receipts*, and on the to report the general position of the estate at the close of the period (31st October 1877), valuation, with his actual *receipts*, and showing the *difference*—stating at the same time

materials for deducing these results; and the accountant begs to explain to trustees, that ne production of the particulars. He feels confident that trustees will come forward to any ulterior measures for procuring it.

NOTES

BY THE

ACCOUNTANT IN BANKRUPTCY IN SCOTLAND,

FOR THE

GUIDANCE OF COMMISSIONERS UNDER THE BANKRUPTCY (SCOTLAND) ACT, 1856 (19 & 20 Vict. c. 79), AND THE BANKRUPTCY AND REAL SECURITIES (SCOTLAND) ACT, 1857 (20 & 21 Vict. c. 19).

It is enacted by the 125th section of the Bankruptcy (Scotland) Act, 1856, that "immediately on the expiration of four "months from the date of the deliverance actually awarding "sequestration, the trustee shall proceed to make up a state "of the whole estate of the bankrupt, of the funds recovered "by him, and of the property outstanding (specifying the "cause why it has not been recovered), and also an account "of his intromissions, and generally of his management; and "within fourteen days after the expiration of the said four "months, the commissioners shall meet and examine such "state and account, and ascertain whether the trustee has "lodged the monies recovered by him in bank or not; and if "he has failed to do so, they shall debit him with a sum at "the rate of £20 on every £100 not so lodged, and so after "that rate on any larger or smaller sum, being not less than "£50; and they shall (1) audit his accounts; and (2) settle "the amount of his commission; and (3) authorise him to "take credit for such commission in his accounts with the "estate; and (4) they shall certify, by a writing under their "hands, engrossed or copied in the sederunt-book, the balance

" due to or by the trustee in his account with the estate as at " the expiration of the said four months, and they shall declare " whether any, and what part of the nett produce of the estate, " after making a reasonable deduction for future contingencies, " shall be divided among the creditors."

Provision is made in sections 130 and 132 of the same Act for similar procedure at the end of eight months from the date of the deliverance actually awarding sequestration, and thereafter at intervals of three months from the close of the immediately preceding account, until the whole funds shall be divided. [See also Bankruptcy and Real Securities (Scotland) Act, 1857 (20 & 21 Vict. c. 19), s. 6.]

The commissioners will observe that it is thus the trustee's duty to close his accounts as follows:—

First account, on the expiration of four months from the date of the deliverance *actually awarding* sequestration.

Second account, on the expiration of eight months from do.

Third account, on the expiration of eleven months from do.

Fourth account, on the expiration of fourteen months from do; and each succeeding account thereafter on the expiration of three months from the date at which the preceeding account was closed. The commissioners will also observe that it is their duty, within fourteen days of the period when each of these accounts is closed, to meet and examine such accounts, &c., and perform the other duties specified in the above-quoted section.

If the trustee fail to submit the accounts for audit at the statutory periods above mentioned, the commissioners are entitled to call on him to do so; and if he refuse or delay to answer their call, they may represent the matter to the accountant, who will give them the assistance and direction proper in the circumstances.

It is further enacted, in the event of a composition being offered, that before it is approved of, " the commissioners shall " audit the accounts of the trustee, and ascertain the balance " due to or by him, and fix the remuneration for his trouble, " subject to the review of the Lord Ordinary or the Sheriff, if " complained of by the trustee, the bankrupt, or any of the " creditors " (s. 141 of the same Act).

The commissioners are thus constituted the proper auditors of the trustee's accounts, and it is *their duty* to audit these accounts and to certify the balance.

In particular, it is their duty to ascertain that the trustee has lodged the monies of the estate in bank, in terms of the Act. In addition to what is provided on this subject by the 125th section of the Act before quoted, provisions applicable to the lodging of the monies in bank are contained in the 82d

and 83d sections of the said Act. The 82d section provides that the trustee "shall lodge all money which he shall receive, "in such bank as the majority of the creditors in number and "value at any general meeting shall appoint, and failing such "appointment, in any joint-stock bank of issue in Scotland "(provided the bank be not one in which the trustee shall be "an acting partner, manager, or cashier); and the money shall "be lodged in the name of the trustee, in his official character "under this Act, at the highest rate of interest which can be "procured for the same; and such bank shall, once yearly at "least, balance such account, and accumulate the interest with "the principal sum, so that both shall thereafter bear interest "as principal; and if such bank fail to do so, such bank shall "be liable to account, as if such interest had been so accu-"mulated:" and the 83d section provides that "if the trustee "shall keep in his hands any sum exceeding fifty pounds "belonging to the estate, for more than ten days, he shall pay "interest to the creditors at the rate of twenty pounds per "centum per annum on the excess of such sum above fifty "pounds, for such time as the same shall be in his hands "beyond ten days; and unless the money has been so kept "from innocent causes, the trustee shall be dismissed from "his office, upon petition to the Lord Ordinary or Sheriff by "any creditor, and have no claim to remuneration, and shall "be liable in expenses."

The Court of Session has found (*Freyd's Trustee*, 30th June 1864) that the fund set apart by the commissioners for the payment of a dividend forms part of the funds of the sequestrated estate, and is subject to the provisions before quoted, as to the lodging of the monies of the estate in bank. According to this decision, the trustee is not entitled to withdraw from bank the amount set apart for payment of a dividend at the time at which it is payable, but only to draw from time to time such sums as may be required to meet the payments to the creditors as they claim their dividends. If a trustee hold in his hands monies of the estate (whether set apart for dividends or not) beyond the limit prescribed by the Act, he is liable to the penalties thereby imposed.

The accountant begs to impress upon the commissioners the necessity of their satisfying themselves, at each period of audit, by examination of deposit-receipts or of bank accounts (duly certified by the bank officials), that the monies are in bank, as represented in the accounts. Cases have occurred in which trustees have made false representations in their accounts regarding their bank transactions; and commissioners have, without examining these transactions, and checking them with the bank vouchers, certified falsely in their docquets that the

accounts were correct, and the money lodged in bank as represented. The accountant has considered it his duty to submit all such cases of misrepresentation as have come to his knowledge to her Majesty's advocate, for the purpose of having the parties prosecuted criminally, under the provision of the 162d section of the said Act.

It is provided (s. 154) that "all accounts for law business "incurred by the trustee, shall, before payment thereof by "the trustee, be submitted for taxation to the auditor of "the Court of Session, or to the auditor of the Sheriff Court of "the county in which the sequestration was carried on, as "may be directed by a general meeting of the creditors." The commissioners ought to ascertain that all accounts for law business have been so taxed, before passing the payments thereof by the trustee, in their audit of his accounts.

The Lord Ordinary on the bills has decided (*Geddes's Trustee*, 6th April 1865), that where the law agent is one of the commissioners he is not entitled to charge more than his costs out of pocket while so acting. In the case quoted, all the professional charges of the agent while he acted as a commissioner were disallowed.

COMPANIES ACT, 1862.

CAP. LXXXIX.

An Act for the Incorporation, Regulation, and Winding-up of Trading Companies and other Associations.—[7th August 1862.]

WHEREAS it is expedient that the Laws relating to the Incorporation, Regulation, and Winding-up of Trading Companies and other Associations should be consolidated and amended: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

Preliminary.

Short Title.

I. This Act may be cited for all Purposes as "The Companies Act, 1862."

Commencement of Act.

II. This Act, with the Exception of such temporary Enactment as is herein-after declared to come into operation immediately, shall not come into operation until the Second Day of *November* One thousand eight hundred and sixty-two, and the Time at which it so comes into operation is herein-after referred to as the Commencement of this Act.

Definition of Insurance Company.

III. For the Purposes of this Act a Company that carries on the Business of Insurance in common with any other Business or Businesses shall be deemed to be an Insurance Company.

Prohibition of of Partnerships exceeding certain Number.

IV. No Company, Association, or Partnership consisting of more than Ten Persons shall be formed, after the Commencement of this Act, for the Purpose of carrying on the Business of Banking, unless it is registered as a Company under this Act, or is formed in pursuance of some other Act of Parliament, or of Letters Patent; and no Company, Association, or Partnership consisting of more than Twenty Persons shall be formed, after the Commencement of this Act, for the Purpose

of carrying on any other Business that has for its Object the Acquisition of Gain by the Company, Association, or Partnership, or by the individual Members thereof, unless it is registered as a Company under this Act, or is formed in pursuance of some other Act of Parliament, or of Letters Patent, or is a Company engaged in working Mines within and subject to the Jurisdiction of the Stannaries.

Division of Act.

V. This Act is divided into Nine Parts, relating to the following Subject Matters:

The First Part,—to the Constitution and Incorporation of Companies and Associations under this Act:

The Second Part,—to the Distribution of the Capital and Liability of Members of Companies and Associations under this Act:

The Third Part,—to the Management and Administration of Companies and Associations under this Act:

The Fourth Part,—to the winding up of Companies and Associations under this Act:

The Fifth Part,—to the Registration Office:

The Sixth Part,—to Application of this Act to Companies registered under the Joint Stock Companies Acts:

The Seventh Part,—to Companies authorized to register under this Act:

The Eighth Part,—to Application of this Act to unregistered Companies:

The Ninth Part,—to Repeal of Acts and temporary Provisions.

PART I.

Constitution and Incorporation of Companies and Associations under this Act.

Memorandum of Association.

Mode of forming Company.

VI. Any Seven or more Persons associated for any lawful Purpose may, by subscribing their Names to a Memorandum of Association, and otherwise complying with the Requisitions of this Act in respect of Registration, form an incorporated Company, with or without limited Liability.

Mode of limiting Liability of Members.

VII. The Liability of the Members of a Company formed under this Act may, according to the Memorandum of Association, be limited either to the Amount, if any, unpaid on the Shares respectively held by them, or to such Amount as the Members may respectively undertake by the Memorandum of Association to contribute to the Assets of the Company in the event of its being wound up.

Memorandum of Association of a Company limited by Shares.

VIII. Where a Company is formed on the Principle of having the Liability of its Members limited to the Amount unpaid on their Shares, herein-after referred to as a Company limited by Shares, the Memorandum of Association shall contain the following Things; (that is to say,)

(1.) The Name of the proposed Company, with the Addition of the Word "Limited" as the last Word in such Name:

(2.) The Part of the United Kingdom, whether *England*, *Scotland*, or *Ireland*, in which the registered Office of the Company is proposed to be situate:

(3.) The Objects for which the proposed Company is to be established:

(4.) A Declaration that the Liability of the Members is limited:

(5.) The Amount of Capital with which the Company proposes to be registered divided into Shares of a certain fixed Amount:

Subject to the following Regulations:

(1.) That no Subscriber shall take less than One Share:

(2.) That each Subscriber of the Memorandum of Association shall write opposite to his Name the Number of Shares he takes.

Memorandum of Association of a Company limited by Guarantee.

IX. Where a Company is formed on the Principle of having the Liability of its Members limited to such Amount as the Members respectively undertake to contribute to the Assets of the Company in the event of the same being wound up, herein-after referred to as a Company limited by Guarantee, the Memorandum of Association shall contain the following Things; (that is to say,)

(1.) The Name of the proposed Company, with the Addition of the Word "Limited" as the last Word in such Name:

(2.) The Part of the United Kingdom, whether *England*, *Scotland*, or *Ireland*, in which the registered Office of the Company is proposed to be situate:

(3.) The Objects for which the proposed Company is to be established:

(4.) A Declaration that each Member undertakes to contribute to the Assets of the Company, in the event of the same being wound up, during the Time that he is a Member, or within One Year afterwards, for Payment of the Debts and Liabilities of the Company contracted before the Time at which he ceases to be a Member, and of the Costs, Charges, and Expenses of winding up the Company, and for the Adjustment of the Rights of the Contributories amongst themselves, such Amount as may be required, not exceeding a specified Amount.

Memorandum of Association of an Unlimited Company.

X. Where a Company is formed on the Principle of having no Limit placed on the Liability of its Members, herein-after referred to as an Unlimited Company, the Memorandum of Association shall contain the following Things; (that is to say,)

(1.) The Name of the proposed Company:

(2.) The Part of the United Kingdom, whether *England*, *Scotland*, or *Ireland*, in which the registered Office of the Company is proposed to be situate:

(3.) The Objects for which the proposed Company is to be established.

Stamp, Signature, and Effect of Memorandum of Association.

XI. The Memorandum of Association shall bear the same Stamp as if it were a Deed, and shall be signed by each Subscriber in the Presence of, and be attested by, One Witness at the least, and that Attestation shall be a sufficient Attestation in *Scotland* as well as in *England* and *Ireland*: It shall, when registered, bind the Company and the Members thereof to the same Extent as if each Member had subscribed his Name and affixed his Seal thereto, and there were in the Memorandum contained, on the Part of himself, his Heirs, Executors, and Administrators, a Covenant to observe all the Conditions of such Memorandum, subject to the Provisions of this Act.

Power of certain Companies to alter Memorandum of Association.

XII. Any Company limited by Shares may so far modify the Conditions contained in its Memorandum of Association, if authorized to do so by its Regulations as originally framed, or as altered by special Resolution in manner herein-after mentioned, as to increase its Capital, by the Issue of new Shares of such Amount as it thinks expedient, or to consolidate and divide its Capital into Shares of larger Amount than its existing Shares, or to convert its paid-up Shares into Stock, but, save as aforesaid, and save as is herein-after provided in the Case of a Change of Name, no Alteration shall be made by any Company in the Conditions contained in its Memorandum of Association.

Power of Companies to Change Name.

XIII. Any Company under this Act, with the Sanction of a special Resolution of the Company passed in manner herein-after mentioned, and with the Approval of the Board of Trade testified in Writing under the Hand of One of its Secretaries or Assistant Secretaries, may change its Name, and upon such Change being made the Registrar shall enter the new Name on the Register in the Place of the former Name, and shall issue a Certificate of Incorporation altered to meet the Circumstances of the Case; but no such Alteration of Name shall affect any Rights or Obligations of the Company, or render defective any legal Proceedings instituted or to be instituted by or against the Company, and any legal Proceedings may be

continued or commenced against the Company by its new Name that might have been continued or commenced against the Company by its former Name.

Articles of Association.

Regulations to be prescribed by Articles of Association.

XIV. The Memorandum of Association may, in the Case of a Company limited by Shares, and shall, in the case of a Company limited by Guarantee or unlimited, be accompanied, when registered, by Articles of Association signed by the Subscribers to the Memorandum of Association, and prescribing such Regulations for the Company as the Subscribers to the Memorandum of Association deem expedient: The Articles shall be expressed in separate Paragraphs, numbered arithmetically: They may adopt all or any of the Provisions contained in the Table marked A. in the First Schedule hereto: They shall, in the Case of a Company, whether limited by Guarantee or unlimited, that has a Capital divided into Shares, state the Amount of Capital with which the Company proposes to be registered; and in the Case of a Company, whether limited by Guarantee or unlimited, that has not a Capital divided into Shares, state the Number of Members with which the Company proposes to be registered, for the Purpose of enabling the Registrar to determine the Fees payable on Registration: In a Company limited by Guarantee or unlimited, and having a Capital divided into Shares, each Subscriber shall take One Share at the least, and shall write opposite to his Name in the Memorandum of Association the Number of Shares he takes.

Application of Table A.

XV. In the Case of a Company limited by Shares, if the Memorandum of Association is not accompanied by Articles of Association, or in so far as the Articles do not exclude or modify the Regulations contained in the Table marked A. in the First Schedule hereto, the last-mentioned Regulations shall, so far as the same are applicable, be deemed to be the Regulations of the Company in the same Manner and to the same Extent as if they had been inserted in Articles of Association, and the Articles had been duly registered.

Stamp, Signature, and Effect of Articles of Association.

XVI. The Articles of Association shall be printed, they shall bear the same Stamp as if they were contained in a Deed, and shall be signed by each Subscriber in the Presence of, and be attested by, One Witness at the least, and such Attestation shall be a sufficient Attestation in *Scotland* as well as in *England* and *Ireland*: When registered they shall bind the Company and the Members thereof to the same Extent as if each Member had subscribed his Name and affixed his Seal thereto, and there were in such Articles contained a Covenant on the Part of himself, his Heirs, Execu-

tors, and Administrators, to conform to all the Regulations contained in such Articles, subject to the Provisions of this Act; and all Monies payable by any Member to the Company, in pursuance of the Conditions and Regulations of the Company, or any of such Conditions or Regulations, shall be deemed to be a Debt due from such Member to the Company, and in *England* and *Ireland* to be in the Nature of a Specialty Debt.

General Provisions.

Registration of Memorandum of Association and Articles of Association, with Fees as in Table B.

XVII. The Memorandum of Association and the Articles of Association, if any, shall be delivered to the Registrar of Joint Stock Companies herein-after mentioned, who shall retain and register the same: There shall be paid to the Registrar by a Company having a Capital divided into Shares, in respect of the several Matters mentioned in the Table marked B. in the First Schedule hereto, the several Fees therein specified, or such smaller Fees as the Board of Trade may from Time to Time direct; and by a Company not having a Capital divided into Shares, in respect of the several Matters mentioned in the Table marked C. in the First Schedule hereto, the several Fees therein specified, or such smaller Fees as the Board of Trade may from Time to Time direct: All Fees paid to the said Registrar in pursuance of this Act shall be paid into the Receipt of Her Majesty's Exchequer, and be carried to the Account of the Consolidated Fund of the United Kingdom of *Great Britain* and *Ireland*.

Effect of Registration.

XVIII. Upon the Registration of the Memorandum of Association, and of the Articles of Association in Cases where Articles of Association are required by this Act or by the Desire of the Parties to be registered, the Registrar shall certify under his Hand that the Company is incorporated, and in the Case of a Limited Company that the Company is limited: The Subscribers of the Memorandum of Association, together with such other Persons as may from Time to Time become Members of the Company, shall thereupon be a Body Corporate by the Name contained in the Memorandum of Association, capable forthwith of exercising all the Functions of an incorporated Company, and having perpetual Succession and a Common Seal, with Power to hold Lands, but with such Liability on the Part of the Members to contribute to the Assets of the Company in the event of the same being wound up as is herein-after mentioned: A Certificate of the Incorporation of any Company given by the Registrar shall be conclusive Evidence that all the Requisitions of this Act in respect of Registration have been complied with.

XIX. A Copy of the Memorandum of Association, having

Copies of Memorandum and Articles to be given to Members.

annexed thereto the Articles of Association, if any, shall be forwarded to every Member, at his Request, on Payment of the Sum of One Shilling or such less Sum as may be prescribed by the Company for each Copy; and if any Company makes default in forwarding a Copy of the Memorandum of Association and Articles of Association, if any, to a Member, in pursuance of this Section, the Company so making default shall for each Offence incur a Penalty not exceeding One Pound.

Prohibition against Identity of Names in Companies.

XX. No Company shall be registered under a Name identical with that by which a subsisting Company is already registered, or so nearly resembling the same as to be calculated to deceive, except in a Case where such subsisting Company is in the Course of being dissolved and testifies its Consent in such Manner as the Registrar requires; and if any Company, through Inadvertence or otherwise, is, without such Consent as aforesaid, registered by a Name identical with that by which a subsisting Company is registered, or so nearly resembling the same as to be calculated to deceive, such first-mentioned Company may, with the Sanction of the Registrar, change its Name, and upon such Change being made the Registrar shall enter the new Name on the Register in the Place of the former Name, and shall issue a Certificate of Incorporation altered to meet the Circumstances of the Case; but no such Alteration of Name shall affect any Rights or Obligations of the Company, or render defective any legal Proceedings instituted or to be instituted by or against the Company, and any legal Proceedings may be continued or commenced against the Company by its new Name that might have been continued or commenced against the Company by its former Name.

Prohibition against certain Companies holding Land.

XXI. No Company formed for the Purpose of promoting Art, Science, Religion, Charity, or any other like Object, not involving the Acquisition of Gain by the Company or by the individual Members thereof, shall, without the Sanction of the Board of Trade, hold more than Two Acres of Land; but the Board of Trade may, by Licence under the Hand of One of their Principal Secretaries or Assistant Secretaries, empower any such Company to hold Lands in such Quantity and subject to such Conditions as they think fit.

PART II.

Distribution of Capital and Liability of Members of Companies and Associations under this Act.

Distribution of Capital.

Nature of Interest Company.

XXII. The Shares or other Interest of any Member in a Company under this Act shall be Personal Estate, capable of

being transferred in manner provided by the Regulations of the Company, and shall not be of the Nature of Real Estate, and each Share shall, in the Case of a Company having a Capital divided into Shares, be distinguished by its appropriate Number.

Definition of "Member."

XXIII. The Subscribers of the Memorandum of Association of any Company under this Act shall be deemed to have agreed to become Members of the Company whose Memorandum they have subscribed, and upon the Registration of the Company shall be entered as Members on the Register of Members herein-after mentioned; and every other Person who has agreed to become a Member of a Company under this Act, and whose Name is entered on the Register of Members, shall be deemed to be a Member of the Company.

Transfer by Personal Representative.

XXIV. Any Transfer of the Share or other Interest of a deceased Member of a Company under this Act, made by his Personal Representative, shall, notwithstanding such Personal Representative may not himself be a Member, be of the same Validity as if he had been a Member at the Time of the Execution of the Instrument of Transfer.

Register of Members.

XXV. Every Company under this Act shall cause to be kept in One or more Books a Register of its Members, and there shall be entered therein the following Particulars:

(1.) The Names and Addresses, and the Occupations, if any, of the Members of the Company, with the Addition, in the Case of a Company having a Capital divided into Shares, of a Statement of the Shares held by each Member, distinguishing each Share by its Number: And of the Amount paid or agreed to be considered as paid on the Shares of each Member:

(2.) The Date at which the Name of any Person was entered in the Register as a Member:

(3.) The Date at which any Person ceased to be a Member:

And any Company acting in contravention of this Section shall incur a Penalty not exceeding Five Pounds for every Day during which its Default in complying with the Provisions of this Section continues, and every Director or Manager of the Company who shall knowingly and wilfully authorize or permit such Contravention shall incur the like Penalty.

Annual List of Members

XXVI. Every Company under this Act, and having a Capital divided into Shares, shall make, once at least in every Year, a List of all Persons who, on the Fourteenth Day succeeding the Day on which the Ordinary General Meeting, or if there is more than One Ordinary Meeting in each Year, the First of such Ordinary General Meetings is held, are Members of the Company; and such List shall state the Names, Addresses, and Occupations of all the Members therein men-

tioned, and the Number of Shares held by each of them, and shall contain a Summary specifying the following Particulars:

(1.) The Amount of the Capital of the Company, and the Number of Shares into which it is divided:
(2.) The Number of Shares taken from the Commencement of the Company up to the Date of the Summary:
(3.) The Amount of Calls made on each Share:
(4.) The total Amount of Calls received:
(5.) The total Amount of Calls unpaid:
(6.) The total Amount of Shares forfeited:
(7.) The Names, Addresses, and Occupations of the Persons who have ceased to be Members since the last List was made, and the Number of Shares held by each of them.

The above List and Summary shall be contained in a separate Part of the Register, and shall be completed within Seven Days after such Fourteenth Day as is mentioned in this Section, and a Copy shall forthwith be forwarded to the Registrar of Joint Stock Companies.

Penalty on Company, &c. not keeping a proper Register.

XXVII. If any Company under this Act, and having a Capital divided into Shares, makes default in complying with the Provisions of this Act with respect to forwarding such List of Members or Summary as is herein-before mentioned to the Registrar, such Company shall incur a Penalty not exceeding Five Pounds for every Day during which such default continues, and every Director and Manager of the Company who shall knowingly and wilfully authorize or permit such Default shall incur the like Penalty.

Company to give Notice of Consolidation or of Conversion of Capital into Stock.

XXVIII. Every Company under this Act, having a Capital divided into Shares, that has consolidated and divided its Capital into Shares of larger Amount than its existing Shares, or converted any Portion of its Capital into Stock, shall give Notice to the Registrar of Joint Stock Companies of such Consolidation, Division, or Conversion, specifying the Shares so consolidated, divided, or converted.

Effect of Conversion of Shares into Stock.

XXIX. Where any Company under this Act, and having a Capital divided into Shares, has converted any Portion of its Capital into Stock, and given Notice of such Conversion to the Registrar, all the provisions of this Act which are applicable to Shares only shall cease as to so much of the Capital as is converted into Stock; and the Register of Members hereby required to be kept by the Company, and the List of Members to be forwarded to the Registrar, shall show the Amount of Stock held by each Member in the List instead of the Amount of Shares and the Particulars relating to Shares herein-before required.

Entry of Trusts on Register.

XXX. No Notice of any Trust, expressed, implied, or constructive, shall be entered on the Register, or be receivable by the Registrar, in the Case of Companies under this Act and registered in *England* or *Ireland*.

Certificate of Shares or Stock.

XXXI. A Certificate, under the Common Seal of the Company, specifying any Share or Shares of Stock held by any Member of a Company, shall be *primâ facie* Evidence of the Title of the Member to the Share or Shares or Stock therein specified.

Inspection of Register.

XXXII. The Register of Members, commencing from the Date of the Registration of the Company, shall be kept at the registered Office of the Company herein-after mentioned: Except when closed as herein-after mentioned, it shall during Business Hours, but subject to such reasonable Restrictions as the Company in General Meeting may impose, so that not less than Two Hours in each Day be appointed for Inspection, be open to the Inspection of any Member gratis, and to the Inspection of any other Person on the Payment of One Shilling, or such less Sum as the Company may prescribe, for each Inspection; and every such Member or other Person may require a Copy of such Register, or of any Part thereof, or of such List or Summary of Members as is herein-before mentioned, on Payment of Sixpence for every Hundred Words required to be copied: If such Inspection or Copy is refused, the Company shall incur for each Refusal a Penalty not exceeding Two Pounds, and a further Penalty not exceeding Two Pounds for every Day during which such Refusal continues, and every Director and Manager of the Company who shall knowingly authorize or permit such Refusal shall incur the like Penalty; and in addition to the above Penalty, as respects Companies registered in *England* and *Ireland*, any Judge sitting in Chambers, or the Vice Warden of the Stannaries, in the Case of Companies subject to his Jurisdiction, may by Order compel an immediate Inspection of the Register.

Power to close Register.

XXXIII. Any Company under this Act may, upon giving Notice by Advertisement in some Newspaper circulating in the District in which the registered Office of the Company is situated, close the Register of Members for any Time or Times not exceeding in the whole Thirty Days in each Year.

Notice of Increase of Capital and of Members to be given to Registrar.

XXXIV. Where a Company has a Capital divided into Shares, whether such Shares may or may not have been converted into Stock, Notice of any Increase in such Capital beyond the registered Capital, and where a Company has not a Capital divided into Shares, Notice of any Increase in the Number of Members beyond the registered Number, shall be given to the Registrar in the Case of an Increase of Capital, within Fifteen Days from the Date of the passing of the Re-

solution by which such Increase has been authorized, and in the Case of an Increase of Members within Fifteen Days from the Time at which such Increase of Members has been resolved on or has taken place, and the Registrar shall forthwith record the Amount of such Increase of Capital or Members: If such Notice is not given within the Period aforesaid the Company in default shall incur a Penalty not exceeding Five Pounds for every Day during which such Neglect to give Notice continues, and every Director and Manager of the Company who shall knowingly and wilfully authorize or permit such Default shall incur the like Penalty.

Remedy for improper Entry or Omission of Entry in Register.

XXXV. If the Name of any Person is, without sufficient Cause, entered in or omitted from the Register of Members of any Company under this Act, or if Default is made or unnecessary Delay takes place in entering on the Register the Fact of any Person having ceased to be a Member of the Company, the Person or Member aggrieved, or any Member of the Company, or the Company itself, may, as respects Companies registered in *England* or *Ireland*, by motion in any of Her Majesty's Superior Courts of Law or Equity, or by Application to a Judge sitting in Chambers, or to the Vice Warden of the Stannaries in the Case of Companies subject to his Jurisdiction, and as respects Companies registered in *Scotland* by summary Petition to the Court of Session, or in such other Manner as the said Courts may direct, apply for an Order of the Court that the Register may be rectified; and the Court may either refuse such Application, with or without Costs, to be paid by the Applicant, or it may, if satisfied of the Justice of the Case, make an Order for the Rectification of the Register, and may direct the Company to pay all the Costs of such Motion, Application, or Petition, and any Damages the Party aggrieved may have sustained: The Court may in any Proceeding under this Section decide on any Question relating to the Title of any Person who is a Party to such Proceeding to have his Name entered in or omitted from the Register, whether such Question arises between Two or more Members or alleged Members, or between any Members or alleged Members and the Company, and generally the Court may in any such Proceeding decide any Question that it may be necessary or expedient to decide for the Rectification of the Register; provided that the Court, if a Court of Common Law, may direct an Issue to be tried, in which any Question of Law may be raised, and a Writ of Error or Appeal, in the Manner directed by "The Common Law Procedure Act, 1854," shall lie.

Notice to Registrar of Rectifi-

XXXVI. Whenever any Order has been made rectifying the Register, in the Case of a Company hereby required to send a List of its Members to the Registrar, the Court shall, by its

Order, direct that due Notice of such Rectification be given to the Registrar. cation of Register.

XXXVII. The Register of Members shall be *primâ facie* Evidence of any Matters by this Act directed or authorized to be inserted therein. Register to be Evidence.

Liability of Members.

XXXVIII. In the event of a Company formed under this Act being wound up, every present and past Member of such Company shall be liable to contribute to the Assets of the Company to an amount sufficient for Payment of the Debts and Liabilities of the Company, and the Costs, Charges, and Expenses of the Winding-up, and for the payment of such Sums as may be required for the Adjustment of the Rights of the Contributories amongst themselves, with the Qualifications following; (that is to say,) Liability of present and past Members of Company.

(1.) No past Member shall be liable to contribute to the Assets of the Company if he has ceased to be a Member for a Period of One Year or upwards prior to the Commencement of the Winding-up:

(2.) No past Member shall be liable to contribute in respect of any Debt or Liability of the Company contracted after the Time at which he ceased to be a Member:

(3.) No past Member shall be liable to contribute to the Assets of the Company unless it appears to the Court that the existing Members are unable to satisfy the Contributions required to be made by them in pursuance of this Act:

(4.) In the Case of a Company limited by Shares, no Contribution shall be required from any Member exceeding the Amount, if any, unpaid on the Shares in respect of which he is liable as a present or past Member:

(5.) In the Case of a Company limited by Guarantee, no Contribution shall be required from any Member exceeding the Amount of the Undertaking entered into on his Behalf by the Memorandum of Association:

(6.) Nothing in this Act contained shall invalidate any Provision contained in any Policy of Insurance or other Contract whereby the Liability of individual Members upon any such Policy or Contract is restricted, or whereby the Funds of the Company are alone made liable in respect of such Policy or Contract:

(7.) No Sum due to any Member of a Company, in his Character of a Member, by way of Dividends, Profits, or otherwise, shall be deemed to be a Debt of the Company, payable to such Member in a Case of

Competition between himself and any other Creditor not being a Member of the Company; but any such Sum may be taken into account, for the Purposes of the final Adjustment of the Rights of the Contributories amongst themselves.

PART III.

Management and Administration of Companies and Associations under this Act.

Provisions for Protection of Creditors.

Registered Office of Company.

XXXIX. Every Company under this Act shall have a registered Office to which all Communications and Notices may be addressed: If any Company under this Act carries on Business without having such an Office, it shall incur a Penalty not exceeding Five Pounds for every Day during which Business is so carried on.

Notice of Situation of registered Office.

XL. Notice of the Situation of such registered Office, and of any Change therein, shall be given to the Registrar, and recorded by him: Until such Notice is given the Company shall not be deemed to have complied with the Provisions of this Act with respect to having a registered Office.

Publication of Name by a Limited Company.

XLI. Every Limited Company under this Act, whether limited by Shares or by Guarantee, shall paint or affix, and shall keep painted or affixed, its Name on the Outside of every Office or Place in which the Business of the Company is carried on, in a conspicuous Position, in Letters easily legible, and shall have its name engraven in legible Characters on its Seal, and shall have its Name mentioned in legible Characters in all Notices, Advertisements, and other official Publications of such Company, and in all Bills of Exchange, Promissory Notes, Endorsements, Cheques, and Orders for Money or Goods purporting to be signed by or on behalf of such Company, and in all Bills of Parcels, Invoices, Receipts, and Letters of Credit of the Company.

Penalties on Non-publication of Name.

XLII. If any Limited Company under this Act does not paint or affix, and keep painted or affixed, its Name in manner directed by this Act, it shall be liable to a Penalty not exceeding Five Pounds for not so painting or affixing its Name, and for every Day during which such Name is not so kept painted or affixed, and every Director and Manager of the Company who shall knowingly and wilfully authorize or permit such Default shall be liable to the like Penalty; and if any Director, Manager, or Officer of such Company, or any Person on its behalf, uses or authorizes the Use of any Seal purporting to be a Seal of the Company whereon its Name is not so engraven as afore-

said, or issues or authorizes the Issue of any Notice, Advertisement, or other official Publication of such Company, or signs or authorizes to be signed on behalf of such Company any Bill of Exchange, Promissory Note, Endorsement, Cheque, Order for Money or Goods, or issues or authorizes to be issued any Bill of Parcels, Invoice, Receipt, or Letter of Credit of the Company, wherein its Name is not mentioned in manner aforesaid, he shall be liable to a Penalty of Fifty Pounds, and shall further be personally liable to the Holder of any such Bill of Exchange, Promissory Note, Cheque, or Order for Money or Goods, for the Amount thereof, unless the same is duly paid by the Company.

Register of Mortgages.

XLIII. Every Limited Company under this Act shall keep a Register of all Mortgages and Charges specifically affecting Property of the Company, and shall enter in such Register in respect of each Mortgage or Charge a short Description of the Property mortgaged or charged, the Amount of Charge created, and the Names of the Mortgagees or Persons entitled to such Charge: If any Property of the Company is mortgaged or charged without such Entry as aforesaid being made, every Director, Manager, or other Officer of the Company who knowingly and wilfully authorizes or permits the Omission of such Entry shall incur a Penalty not exceeding Fifty Pounds: The Register of Mortgages required by this Section shall be open to Inspection by any Creditor or Member of the Company at all reasonable Times; and if such Inspection is refused, any Officer of the Company refusing the same, and every Director and Manager of the Company authorizing or knowingly and wilfully permitting such Refusal, shall incur a Penalty not exceeding Five Pounds, and a further Penalty not exceeding Two Pounds for every Day during which such Refusal continues; and in addition to the above Penalty, as respects Companies registered in *England* and *Ireland*, any Judge sitting in Chambers, or the Vice Warden of the Stannaries in the Case of Companies subject to his Jurisdiction, may by Order compel an immediate Inspection of the Register.

Certain Companies to publish Statement entered in Schedule.

XLIV. Every Limited Banking Company and every Insurance Company, and Deposit, Provident, or Benefit Society under this Act shall, before it commences Business, and also on the First *Monday* in *February* and the First *Monday* in *August* in every Year during which it carries on Business, make a Statement in the Form marked D. in the First Schedule hereto, or as near thereto as Circumstances will admit, and a Copy of such Statement shall be put up in a conspicuous Place in the registered Office of the Company, and in every Branch Office or Place where the Business of the Company is carried on, and if Default is made in compliance with the Provisions of this Section the Company shall be liable to a Penalty

not exceeding Five Pounds for every Day during which such Default continues, and every Director and Manager of the Company who shall knowingly and wilfully authorize or permit such Default shall incur the like Penalty.

Every Member and every Creditor of any Company mentioned in this Section shall be entitled to a Copy of the abovementioned Statement on Payment of a Sum not exceeding Sixpence.

List of Directors to be sent to Registrar.

XLV. Every Company under this Act, and not having a Capital divided into Shares, shall keep at its registered Office a Register containing the Names and Addresses and the Occupations of its Directors or Managers, and shall send to the Registrar of Joint Stock Companies a Copy of such Register, and shall from Time to Time notify to the Registrar any Change that takes place in such Directors or Managers.

Penalty on Company not keeping Register of Directors.

XLVI. If any Company under this Act, and not having a Capital divided into Shares, makes Default in keeping a Register of its Directors or Managers, or in sending a Copy of such Register to the Registrar in compliance with the foregoing Rules, or in notifying to the Registrar any Change that takes place in such Directors or Managers, such delinquent Company shall incur a Penalty not exceeding Five Pounds for every Day during which such Default continues, and every Director and Manager of the Company who shall knowingly and wilfully authorize or permit such Default shall incur the like Penalty.

Promissory Notes and Bills of Exchange.

XLVII. A Promissory Note or Bill of Exchange shall be deemed to have been made, accepted, or endorsed on behalf of any Company under this Act, if made, accepted, or endorsed in the Name of the Company by any Person acting under the Authority of the Company, or if made, accepted, or endorsed by or on behalf or on account of the Company, by any Person acting under the Authority of the Company.

Prohibition against carrying on Business with less than Seven Members.

XLVIII. If any Company under this Act carries on Business when the Number of its Members is less than Seven for a Period of Six Months after the Number has been so reduced, every Person who is a Member of such Company during the Time that it so carries on Business after such Period of Six Months, and is cognizant of the Fact that it is so carrying on Business with fewer than Seven Members, shall be severally liable for the Payment of the whole Debts of the Company contracted during such Time, and may be sued for the same, without the Joinder in the Action or Suit of any other Member.

Provisions for Protection of Members.

General Meeting of Company.

XLIX. A General Meeting of every Company under this Act shall be held once at the least in every Year.

L. Subject to the Provisions of this Act, and to the Conditions contained in the Memorandum of Association, any Company formed under this Act may, in General Meeting, from Time to Time, by passing a Special Resolution in manner herein-after mentioned, alter all or any of the Regulations of the Company contained in the Articles of Association or in the Table marked A. in the First Schedule, where such Table is applicable to the Company, or make new Regulations to the Exclusion of or in addition to all or any of the Regulations of the Company; and any Regulations so made by Special Resolution shall be deemed to be Regulations of the Company of the same Validity as if they had been originally contained in the Articles of Association, and shall be subject in like Manner to be altered or modified by any subsequent Special Resolution. Power to alter Regulations by Special Resolution.

LI. A Resolution passed by a Company under this Act shall be deemed to be special whenever a Resolution has been passed by a Majority of not less than Three Fourths of such Members of the Company for the Time being entitled, according to the Regulations of the Company, to vote as may be present, in Person or by Proxy (in Cases where by the Regulations of the Company Proxies are allowed), at any General Meeting of which Notice specifying the Intention to propose such Resolution has been duly given, and such Resolution has been confirmed by a Majority of such Members for the Time being entitled, according to the Regulations of the Company, to vote as may be present, in Person or by Proxy, at a subsequent General Meeting, of which Notice has been duly given, and held at an Interval of not less than Fourteen Days, nor more than One Month from the Date of the Meeting at which such Resolution was first passed: At any Meeting mentioned in this Section, unless a Poll is demanded by at least Five Members, a Declaration of the Chairman that the Resolution has been carried shall be deemed conclusive Evidence of the Fact, without Proof of the Number or Proportion of the Votes recorded in favour of or against the same: Notice of any Meeting shall, for the Purposes of this Section, be deemed to be duly given, and the Meeting to be duly held, whenever such Notice is given and Meeting held in manner prescribed by the Regulations of the Company: In computing the Majority under this Section, when a Poll is demanded, Reference shall be had to the Number of Votes to which each Member is entitled by the Regulations of the Company. Definition of Special Resolution.

LII. In default of any Regulations as to voting every Member shall have One Vote, and in default of any Regulations as to summoning General Meetings a Meeting shall be held to be duly summoned of which Seven Days Notice in Writing has been served on every Member in manner in which Notices are Provision where no Regulations as to Meetings.

required to be served by the Table marked A. in the First Schedule hereto, and in default of any Regulations as to the Persons to summon Meetings Five Members shall be competent to summon the same, and in default of any Regulations as to who is to be Chairman of such Meeting, it shall be competent for any Person elected by the Members present to preside.

Registry of Special Resolutions.

LIII. A Copy of any Special Resolution that is passed by any Company under this Act shall be printed and forwarded to the Registrar of Joint Stock Companies, and be recorded by him: If such Copy is not so forwarded within Fifteen Days from the Date of the Confirmation of the Resolution, the Company shall incur a Penalty not exceeding Two Pounds for every Day after the expiration of such Fifteen Days during which such Copy is omitted to be forwarded, and every Director and Manager of the Company who shall knowingly and wilfully authorize or permit such Default shall incur the like Penalty.

Copies of Special Resolution 3.

LIV. Where Articles of Association have been registered, a Copy of every Special Resolution for the Time being in force shall be annexed to or embodied in every Copy of the Articles of Association that may be issued after the passing of such Resolution: Where no Articles of Association have been registered, a Copy of any Special Resolution shall be forwarded in Print to any Member requesting the same on Payment of One Shilling, or such less Sum as the Company may direct: And if any Company makes default in complying with the Provisions of this Section it shall incur a Penalty not exceeding One Pound for each Copy in respect of which such Default is made; and every Director and Manager of the Company who shall knowingly and wilfully authorize or permit such Default shall incur the like Penalty.

Execution of Deeds abroad.

LV. Any Company under this Act may, by Instrument in Writing under its Common Seal, empower any Person, either generally or in respect of any Specified Matters, as its Attorney, to execute Deeds on its Behalf in any Place not situate in the United Kingdom; and every Deed signed by such Attorney, on behalf of the Company, and under his Seal, shall be binding on the Company, and have the same Effect as if it were under the Common Seal of the Company.

Examination of Affairs of Company by Inspectors.

LVI. The Board of Trade may appoint One or more competent Inspectors to examine into the Affairs of any Company under this Act, and to report thereon, in such manner as the Board may direct, upon the Applications following; (that is to say,)

(1.) In the Case of a Banking Company that has a Capital divided into Shares, upon the Application of Members holding not less than One Third Part of the whole Shares of the Company for the time being issued:

(2.) In the Case of any other Company that has a Capital divided into Shares, upon the Application of Members holding not less than One Fifth Part of the whole Shares of the Company for the Time being issued:

(3.) In the Case of any Company not having a Capital divided into Shares, upon the Application of Members being in Number not less than One Fifth of the whole Number of Persons for the Time being entered on the Register of the Company as Members.

Application for Inspection to be supported by Evidence.

LVII. The Application shall be supported by such Evidence as the Board of Trade may require for the Purpose of showing that the Applicants have good Reason for requiring such Investigation to be made, and that they are not actuated by malicious Motives in instituting the same; the Board of Trade may also require the Applicants to give Security for Payment of the Costs of the Inquiry before appointing any Inspector or Inspectors.

Inspection of Books.

LVIII. It shall be the Duty of all Officers and Agents of the Company to produce for the Examination of the Inspectors all Books and Documents in their Custody or Power: Any Inspector may examine upon Oath the Officers and Agents of the Company in relation to its Business, and may administer such Oath accordingly: If any Officer or Agent refuses to produce any Book or Document hereby directed to be produced, or to answer any question relating to the Affairs of the Company, he shall incur a Penalty not exceeding Five Pounds in respect of each offence.

Result of Examination how dealt with.

LIX. Upon the Conclusion of the Examination the Inspectors shall report their Opinion to the Board of Trade: Such Report shall be written or printed, as the Board of Trade directs: A Copy shall be forwarded by the Board of Trade to the registered Office of the Company, and a further Copy shall, at the Request of the Members upon whose application the Inspection was made, be delivered to them or to any One or more of them: All Expenses of and incidental to any such Examination as aforesaid shall be defrayed by the Members upon whose Application the Inspectors were appointed, unless the Board of Trade shall direct the same to be paid out of the Assets of the Company, which it is hereby authorized to do.

Power of Company to appoint Inspectors.

LX. Any Company under this Act may by Special Resolution appoint Inspectors for the Purpose of examining into the Affairs of the Company: The Inspectors so appointed shall have the same Powers and perform the same Duties as Inspectors appointed by the Board of Trade, with this Exception, that, instead of making their Report to the Board of Trade, they shall make the same in such manner and to such Persons as the Company in General Meeting directs; and the Officers

and Agents of the Company shall incur the same Penalties, in case of any Refusal to produce any Book or Document hereby required to be produced to such Inspectors, or to answer any Question, as they would have incurred if such Inspector had been appointed by the Board of Trade.

Report of Inspectors to be Evidence.

LXI. A Copy of the Report of any Inspectors appointed under this Act, authenticated by the Seal of the Company into whose Affairs they have made Inspection, shall be admissible in any legal Proceeding, as Evidence of the Opinion of the Inspectors in relation to any Matter contained in such Report.

Notices.

Service of Notices on Company.

LXII. Any Summons, Notice, Order, or other Document required to be served upon the Company may be served by leaving the same, or sending it through the Post in a prepaid Letter addressed to the Company, at their registered Office.

Rules as to Notices by Letter.

LXIII. Any Document to be served by Post on the Company shall be posted in such Time as to admit of its being delivered in the due Course of Delivery within the period (if any) prescribed for the Service thereof, and in proving Service of such Document it shall be sufficient to prove that such Document was properly directed, and that it was put as a prepaid Letter into the Post Office.

Authentication of Notices of Company.

LXIV. Any Summons, Notice, Order, or Proceeding requiring Authentication by the Company, may be signed by any Director, Secretary, or other authorized Officer of the Company, and need not be under the Common Seal of the Company, and the same may be in Writing or in Print, or partly in Writing and partly in Print.

Legal Proceedings.

Recovery of Penalties

LXV. All Offences under this Act made punishable by any Penalty may be prosecuted summarily before Two or more Justices, as to *England*, in manner directed by an Act passed in the Session holden in the Eleventh and Twelfth Years of the Reign of Her Majesty Queen *Victoria*, Chapter Forty-three, intituled *An Act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions within* England *and* Wales *with respect to summary Convictions and Orders*, or any Act amending the same; and as to *Scotland*, before Two or more Justices or the Sheriff of the County, in manner directed by the Act passed in the Session of Parliament holden in the Seventeenth and Eighteenth Years of the Reign of Her Majesty Queen *Victoria*, Chapter One hundred and four, intituled *An Act to amend and consolidate the Acts relating to Merchant Shipping*, or any Act amending the same, as regards Offences

in *Scotland* against that Act, not being Offences by that Act described as Felonies or Misdemeanors; and as to *Ireland*, in manner directed by the Act passed in the Session holden in the Fourteenth and Fifteenth Years of the Reign of Her Majesty Queen *Victoria*, Chapter Ninety-three, intituled *An Act to consolidate and amend the Acts regulating the Proceedings of Petty Sessions and the Duties of Justices of the Peace out of Quarter Sessions in* Ireland, or any Act amending the same.

Application of Penalties.

LXVI. The Justices or Sheriff imposing any Penalty under this Act may direct the whole or any Part thereof to be applied in or towards Payment of the Costs of the Proceedings, or in or towards the rewarding the Person upon whose Information or at whose Suit such penalty has been recovered; and, subject to such Direction, all Penalties shall be paid into the Receipt of Her Majesty's Exchequer, in such Manner as the Treasury may direct, and shall be carried to and form Part of the Consolidated Fund of the United Kingdom.

Evidence of Proceedings at Meetings.

LXVII. Every Company under this Act shall cause Minutes of all Resolutions and Proceedings of General Meetings of the Company, and of the Directors or Managersof the Company in Cases where there are Directors or Managers, to be duly entered in Books to be from Time to Time provided for the Purpose; and any such Minute as aforesaid, if purporting to be signed by the Chairman of the Meeting at which such Resolutions were passed or Proceedings had, or by the Chairman of the next succeeding Meeting, shall be received as evidence in all legal Proceedings; and until the contrary is proved, every General Meeting of the Company or Meeting of Directors or Managers in respect of the Proceedings of which Minutes have been so made shall be deemed to have been duly held and convened, and all Resolutions passed thereat or Proceedings had, to have been duly passed and had, and all Appointments of Directors, Managers, or Liquidators shall be deemed to be valid, and all Acts done by such Directors, Managers, or Liquidators shall be valid, notwithstanding any Defect that may afterwards be discovered in their Appointments or Qualifications.

Jurisdiction of Vice Warden of Stannaries.

LXVIII. In the Case of Companies under this Act, and engaged in Working Mines within and subject to the Jurisdiction of the Stannaries, the Court of the Vice Warden of the Stannaries shall have and exercise the like Jurisdiction and Powers, as well on the Common Law as on the Equity Side thereof, which it now possesses by Custom, Usage, or Statute in the Case of unincorporated Companies, but only so far as such Jurisdiction or Powers are consistent with the Provisions of this Act and with the Constitution of Companies as prescribed or required by this Act; and for the Purpose of giving fuller Effect to such Jurisdiction in all Actions, Suits, or legal Pro-

ceedings instituted in the said Court, in Causes or Matters whereof the Court has Cognizance, all Process issuing out of the same, and all Orders, Rules, Demands, Notices, Warrants, and Summonses required or authorized by the Practice of the Court to be served on any Company, whether registered or not registered, or any Member or Contributory thereof, or any Officer, Agent, Director, Manager, or Servant thereof, may be served in any Part of *England* without any Special Order of the Vice Warden for that Purpose, or by such special Order may be served in any Part of the United Kingdom of *Great Britain* and *Ireland*, or in the adjacent Islands, Parcel of the Dominions of the Crown, on such Terms and Conditions as the Court shall think fit; and all Decrees, Orders, and Judgments of the said Court made or pronounced in such Causes or Matters may be enforced in the same Manner in which Decrees, Orders, and Judgments of the Court may now by Law be enforced, whether within or beyond the local Limits of the Stannaries; and the Seal of the said Court, and the Signature of the Registrar thereof, shall be judicially noticed by all other Courts and Judges in *England*, and shall require no other Proof than the Production thereof: The Registrar of the said Court or the Assistant Registrar, in making Sales under any Decree or Order of the Court shall be entitled to the same Privilege of Selling by Auction or Competition without a Licence, and without being liable to Duty, as a Judge of the Court of Chancery is entitled to in pursuance of the Acts in that Behalf.

Provision as to Costs in Actions brought by certain Limited Companies.

LXIX. Where a Limited Company is Plaintiff or Pursuer in any Action, Suit, or other legal Proceeding, any Judge having Jurisdiction in the Matter may, if it appears by any credible Testimony that there is Reason to believe that if the Defendant be successful in his Defence the Assets of the Company will be insufficient to pay his Costs, require sufficient Security to be given for such Costs, and may stay all Proceedings until such Security is given.

Declaration in Action against Members.

LXX. In any Action or Suit brought by the Company against any Member to recover any Call or other Monies due from such Member in his Character of Member, it shall not be necessary to set forth the special Matter, but it shall be sufficient to allege that the Defendant is a Member of the Company, and is indebted to the Company in respect of a Call made or other Monies due whereby an Action or Suit hath accrued to the Company.

Alteration of Forms.

Board of Trade may alter

LXXI. The Forms set forth in the Second Schedule hereto, or Forms as near thereto as Circumstances admit, shall be used

in all Matters to which such Forms refer; the Board of Trade may from Time to Time make such alterations in the Tables and Forms contained in the First Schedule hereto, so that it does not increase the Amount of Fees payable to the Registrar in the said Schedule mentioned, and in the Forms in the Second Schedule, or make such Additions to the last-mentioned Forms as it deems requisite: Any such Table or Form, when altered, shall be published in the *London Gazette*, and upon such Publication being made such Table or Form shall have the same Force as if it were included in the Schedule to this Act, but no Alteration made by the Board of Trade in the Table marked A. contained in the First Schedule shall affect any Company registered prior to the Date of such Alteration, or repeal, as respects such Company, any Portion of such Table. Forms in Schedule.

Arbitrations.

LXXII. Any Company under this Act may from Time to Time, by Writing under its Common Seal, agree to refer and may refer to Arbitration, in accordance with "The Railway Companies Arbitration Act, 1859," any existing or future Difference, Question, or other Matter whatsoever in dispute between itself and any other Company or Person, and the Companies Parties to the Arbitration may delegate to the Person or Persons to whom the Reference is made Power to settle any Terms or to determine any Matter capable of being lawfully settled or determined by the Companies themselves, or by the Directors or other managing Body of such Companies. Power for Companies to refer Matters to Arbitration.

LXXIII. All the Provisions of "The Railway Companies Arbitration Act, 1859," shall be deemed to apply to Arbitrations between Companies and Persons in pursuance of this Act; and in the Construction of such Provisions "the Companies" shall be deemed to include Companies authorized by this Act to refer Disputes to Arbitration. Provisions of 22 & 23 Vict. c. 59, to apply.

PART IV.

Winding up of Companies and Associations under this Act.

Preliminary.

LXXIV. The Term "Contributory" shall mean every Person liable to contribute to the Assets of a Company under this Act, in the event of the same being wound up: (*a*) It shall also, in all Proceedings for determining the persons who are to be deemed Contributories, and in all Proceedings prior to the final Determination of such Persons, include any Person alleged to be a Contributory. Meaning of Contributory.

(*a*) 1. As to who are contributories, *vide* s. 38, *antea*.
2. Held that trustees are liable personally. (*Lumsden*, 22d June 1865, *H. L.*; *Graham*, 25th Feb. 1866; also a *curator bonis*, *Lumsden*, 16th Nov. 1866.)

Nature of Liability of Contributory.

LXXV. The Liability of any Person to contribute to the Assets of a Company under this Act in the event of the same being wound up, shall be deemed to create a Debt (in *England* and *Ireland* of the Nature of a Specialty) accruing due from such Person at the Time when his Liability commenced, but payable at the Time or respective Times when Calls are made as herein-after mentioned for enforcing such Liability; and it shall be lawful in the Case of the Bankruptcy of any Contributory to prove against his Estate the Estimated Value of his Liability to future Calls, as well as Calls already made.

Contributories in case of Death.

LXXVI. If any Contributory dies either before or after he has been placed on the List of Contributories herein-after mentioned, his Personal Representatives, Heirs, and Devisees shall be liable in a due Course of Administration to contribute to the Assets of the Company in discharge of the Liability of such deceased Contributory, and such Personal Representatives, Heirs, and Devisees shall be deemed to be Contributories accordingly.

Contributories in case of Bankruptcy.

LXXVII. If any Contributory becomes Bankrupt, either before or after he has been placed on the List of Contributories, his Assignees shall be deemed to represent such Bankrupt for all the Purposes of the Winding-up, and shall be deemed to be Contributories accordingly, and may be called upon to admit to Proof against the Estate of such Bankrupt, or otherwise to allow to be paid out of his Assets in due Course of Law, any Monies due from such Bankrupt in respect of his Liability to contribute to the Assets of the Company being wound up; and for the Purposes of this Section any person who may have taken the benefit of any Act for the Relief of Insolvent Debtors before the Eleventh Day of *October* One thousand eight hundred and sixty-one shall be deemed to have become bankrupt.

Contributories in case of Marriage.

LXXVIII. If any Female Contributory marries, either before or after she has been placed on the List of Contributories, her Husband shall during the Continuance of the Marriage be liable to contribute to the Assets of the Company the same Sum as she would have been liable to contribute if she had not married, and he shall be deemed to be a Contributory accordingly.

Winding up by Court.

Circumstances under which Company may be

LXXIX. A Company under this Act (*a*) may be wound up by the Court as herein-after defined, under the following Circumstances; (that is to say,)

(1.) Whenever the Company has passed a Special Resolution requiring the Company to be wound up by the Court:

(2.) Whenever the Company does not commence its Business within a Year from its Incorporation, or suspends its Business for the space of a whole Year: wound up by Court.

(3.) Whenever the Members are reduced in Number to less than Seven:

(4.) Whenever the Company is unable to pay its Debts:

(5.) Whenever the Court is of opinion that it is just and equitable that the Company should be wound up.

(*a*) As to winding up of unregistered companies, *vide* s. 199, *postea*.

LXXX. A Company under this Act shall be deemed to be unable to pay its Debts, Company when deemed unable to pay its Debts.

(1.) Whenever a Creditor, by Assignment or otherwise, to whom the Company is indebted, at Law or in Equity, in a Sum exceeding Fifty Pounds then due, has served on the Company, by leaving the same at their registered Office, a Demand under his Hand requiring the Company to pay the Sum so due, and the Company has for the Space of three Weeks succeeding the Service of such Demand neglected to pay such Sum, or to secure or compound for the same to the reasonable Satisfaction of the Creditor:

(2.) Whenever, in *England* and *Ireland*, Execution or other Process issued on a Judgment, Decree, or Order obtained in any Court in favour of any Creditor, at Law or in Equity, in any Proceeding instituted by such Creditor against the Company, is returned unsatisfied in whole or in part:

(3.) Whenever, in *Scotland*, the Induciæ of a Charge for Payment on an Extract Decree, or an Extract registered Bond, or an Extract registered Protest have expired without Payment being made:

(4.) Whenever it is proved to the Satisfaction of the Court that the Company is unable to pay its Debts.

LXXXI. The Expression "the Court," as used in this Part of this Act, shall mean the following Authorities; (that is to say,) Definition of "the Court."

In the Case of a Company engaged in working any Mine within and subject to the Jurisdiction of the Stannaries, —the Court of the Vice Warden in the Stannaries, unless the Vice Warden certifies that in his Opinion the Company would be more advantageously wound up in the High Court of Chancery, in which case "the Court" shall mean the High Court of Chancery:

In the Case of a Company registered in *England* that is not engaged in working any such Mine as aforesaid,— the High Court of Chancery:

In the Case of a Company registered in *Ireland*, the Court of Chancery in *Ireland:*

In all Cases of Companies registered in *Scotland*, the Court of Session in either Division thereof:

Provided that where the Court of Chancery in *England* or *Ireland* makes an Order for winding up a Company under this Act, it may, if it thinks fit, direct all subsequent Proceedings for winding up the same to be had in the Court of Bankruptcy having Jurisdiction in the Place in which the registered Office of the Company is situate; and thereupon such last-mentioned Court of Bankruptcy shall, for the Purposes of winding up the Company, be deemed to be "the Court" within the meaning of the Act, and shall have for the Purposes of such winding up all the Powers of the High Court of Chancery, or of the Court of Chancery in *Ireland*, as the Case may require.

Application for winding up to be made by Petition.

LXXXII. Any Application to the Court for the winding up of a Company under this Act shall be by Petition; (*a*) it may be presented by the Company, or by any One or more Creditor or Creditors, Contributory or Contributories of the Company, or by all or any of the above Parties, together or separately; and every Order which may be made on any such Petition shall operate in favour of all the Creditors and all the Contributories of the Company in the same Manner as if it had been made upon the joint Petition of a Creditor and a Contributory.

(*a*) As to costs being allowed of two petitions. (*Vide Graham*, 20th July 1877.)

Power of Court.

LXXXIII. Any Judge of the High Court of Chancery may do in Chambers any Act which the Court is hereby authorized to do; and the Vice Warden of the Stannaries may direct that a Petition for winding up a Company be heard by him at such Time and at such Place within the Jurisdiction of the Stannaries, or within or near to the Place where the registered Office of the Company is situated, as he may deem to be convenient to the Parties concerned, or (with the Consent of the Parties concerned) at any Place in *England;* and all Orders made thereon shall have the same Force and Effect as if they had been made by the Vice Warden sitting at *Truro* or elsewhere within the Jurisdiction of the Court, and all Parties and Persons summoned to attend at the Hearing of any such Petition shall be compellable to give their attendance before the Vice Warden by like Process and in like Manner as at the Hearing of any Cause or Matter at the usual Sitting of the said Court; and the Registrar of the Court may, subject to Exception or Appeal to the Vice Warden as heretofore used, do and exercise such and the like Acts and Powers in the

Matter of winding up as he is now used to do and exercise in a Suit on the Equity Side of the said Court.

Commencement of winding up by Court.

LXXXIV. A Winding up of a Company by the Court shall be deemed to commence at the Time of the Presentation of the Petition for the Winding up.

Court may grant Injunction.

LXXXV. The Court may, at any Time after the Presentation of a Petition for winding up a Company under this Act, and before making an Order for winding up the Company, upon the Application of the Company, or of any Creditor or Contributory of the Company, restrain further Proceedings in any Action, Suit, or Proceeding against the Company, upon such Terms as the Court thinks fit; the Court may also at any Time after the Presentation of such Petition, and before the First appointment of Liquidators, appoint provisionally an Official Liquidator of the Estate and Effects of the Company.

Course to be pursued by Court on hearing Petition.

LXXXVI. Upon hearing the Petition the Court may dismiss the same with or without Costs, may adjourn the Hearing conditionally or unconditionally, and may make any Interim Order or any other Order that it deems just.

Actions and Suits to be stayed after Order for winding up.

LXXXVII. When an Order has been made for winding up a Company under this Act, no Suit, Action, or other Proceeding shall be proceeded with or commenced against the Company except with the Leave of the Court, and subject to such Terms as the Court may impose.

Copy of Order to be forwarded to Registrar.

LXXXVIII. When an Order has been made for winding up a Company under this Act, a Copy of such Order shall forthwith be forwarded by the Company to the Registrar of Joint Stock Companies, who shall make a Minute thereof in his Books relating to the Company.

Power of Court to stay Proceedings.

LXXXIX. The Court may at any Time after an Order has been made for winding up a Company, upon the application by Motion of any Creditor or Contributory of the Company, and upon Proof to the Satisfaction of the Court that all Proceedings in relation to such Winding up ought to be stayed, make an Order staying the same, either altogether or for a limited Time, on such Terms and subject to such Conditions as it deems fit.

Effect of Order on Share Capital of Company limited by Guarantee.

XC. When an Order has been made for winding up a Company limited by Guarantee and having a Capital divided into Shares, any Share Capital that may not have been called up shall be deemed to be Assets of the Company, and to be a Debt (in *England* and *Ireland* of the Nature of a Specialty) due to the Company from each Member to the Extent of any Sums that may be unpaid on any Shares held by him, and payable at such Time as may be appointed by the Court.

Court may have regard to Wishes of

XCI. The Court may, as to all Matters relating to the Winding up, have regard to the Wishes of the Creditors or Contributories, as proved to it by any sufficient Evidence, and

Creditors or Contributories.

may, if it thinks it expedient, direct Meetings of the Creditors or Contributories to be summoned, held, and conducted in such Manner as the Court directs, for the Purpose of ascertaining their Wishes, and may appoint a Person to act as Chairman of any such Meeting, and to Report the result of such Meeting to the Court: In the Case of Creditors, regard is to be had to the Value of the Debts due to each Creditor, and in the case of Contributories to the Number of Votes conferred on each Contributory by the Regulations of the Company.

Official Liquidators.

Appointment of Official Liquidator.

XCII. For the Purpose of conducting the Proceedings in winding up a Company, and assisting the Court therein, there may be appointed a Person or Persons to be called an Official Liquidator or Official Liquidators; and the Court having Jurisdiction may appoint such Person or Persons, either provisionally or otherwise, as it thinks fit, to the Office of Official Liquidator or Official Liquidators; in all Cases if more Persons than One are appointed to the Office of Official Liquidator, the Court shall declare whether any Act hereby required or authorized to be done by the Official Liquidator is to be done by all or any One or more of such Persons. The Court may also determine whether any and what Security is to be given by any Official Liquidator on his appointment; if no Official Liquidator is appointed, or during any Vacancy in such Appointment, all the Property of the Company shall be deemed to be in the Custody of the Court.

Resignations, Removals, filling up Vacancies, and Compensation.

XCIII. Any Official Liquidator may resign or be removed by the Court on due Cause shown: And any Vacancy in the Office of an Official Liquidator appointed by the Court shall be filled by the Court: There shall be paid to the Official Liquidator such Salary or Remuneration, by way of Per-centage or otherwise, as the Court may direct; and if more Liquidators than One are appointed such Remuneration shall be distributed amongst them in such Proportions as the Court directs.

Style and Duties of Official Liquidator.

XCIV. The Official Liquidator or Liquidators shall be described by the Style of the Official Liquidator or Official Liquidators of the particular Company in respect of which he is or they are appointed, and not by his or their individual Name or Names; he or they shall take into his or their Custody, or under his or their Control, all the Property, Effects, and Things in Actions to which the Company is or appears to be entitled, and shall perform such Duties in reference to the winding up of the Company as may be imposed by the Court. (*a*)

(*a*) The official liquidator is not *eadem persona* with the company, but represents all parties interested (*Jamieson*, 13th March 1868; *H.L.*, 24th

May 1870); and held that to the effect of enforcing any statutory liability of the shareholders to the creditors of the company, the liquidator represents the creditors (*Jamieson, supra.* *Vide* s. 171 *infra.*)

Powers of Official Liquidator.

XCV. The Official Liquidator shall have Power, with the sanction of the Court, (*a*) to do the following Things:

To bring or defend any Action, Suit, or Prosecution, or other legal Proceeding, Civil or Criminal, in the Name and on behalf of the Company:

To carry on the Business of the Company, so far as may be necessary for the beneficial winding up of the same:

To sell the Real and Personal and Heritable and Moveable Property, Effects, and Things in Action of the Company by Public Auction or Private Contract, with Power to transfer the whole thereof to any Person or Company, or to sell the same in Parcels:

To do all Acts and to execute, in the Name and on behalf of the Company, all Deeds, Receipts, and other Documents, and for that Purpose to use, when necessary, the Company's Seal:

To prove, rank, claim, and draw a Dividend, in the Matter of the Bankruptcy or Insolvency or Sequestration of any Contributory, for any Balance against the Estate of such Contributory, and to take and receive Dividends in respect of such Balance, in the Matter of Bankruptcy or Insolvency or Sequestration, as a separate Debt due from such Bankrupt or Insolvent, and rateably with the other separate Creditors:

To draw, accept, make, and endorse any Bill of Exchange or Promissory Note in the Name and on behalf of the Company, also to raise upon the Security of the Assets of the Company from Time to Time any requisite Sum or Sums of Money; and the drawing, accepting, making, or endorsing of every such Bill of Exchange or Promissory Note as aforesaid on behalf of the Company shall have the same Effect with respect to the Liability of such Company as if such Bill or Note had been drawn, accepted, made, or indorsed by or on behalf of such Company in the course of carrying on the Business thereof:

To take out, if necessary, in his official Name, Letters of Administration to any deceased Contributory, and to do in his official Name any other Act that may be necessary for obtaining Payment of any Monies due from a Contributory or from his Estate, and which Act cannot be conveniently done in the Name of the Company; and in all cases where he takes out Letters of Administration, or otherwise uses his official Name for obtaining Payment of any Monies due from a Contributory, such Monies shall for the Purpose of

enabling him to take out such Letters or recover such Monies, be deemed to be due to the Official liquidator himself:

To do and execute all such other Things as may be necessary for winding up the Affairs of the Company and distributing its Assets.

(*a*) As to procedure. (*Vide Collie*, 7th July 1865.)

Discretion of Official Liquidator.

XCVI. The Court may provide by any Order that the Official Liquidator may exercise any of the above Powers without the Sanction or Intervention of the Court, and where an Official Liquidator is provisionally appointed may limit and restrict his Powers by the Order appointing him.

Appointment of Solicitor to Official Liquidator.

XCVII. The Official Liquidator may, with the Sanction of the Court, appoint a Solicitor or Law Agent to assist him in the Performance of his Duties.

Ordinary Powers of Court.

Collection and Application of Assets.

XCVIII. As soon as may be after making an Order for winding up the Company, the Court shall settle a List of Contributories, (*a*) with power to rectify the Register of Members in all Cases where such Rectification is required in pursuance of this Act, and shall cause the Assets of the Company to be collected, and applied in discharge of its Liabilities.

(*a*) As to liability of parties who had acquired shares from original shareholders. (*Vide Jamieson*, 13th March 1868; reversed by the *House of Lords*, 24th May 1870.)

Provision as to representative Contributories.

XCIX. In settling the List of Contributories the Court shall distinguish between Persons who are Contributories in their own Right and Persons who are Contributories as being Representatives of or being liable to the Debts of others; it shall not be necessary, where the Personal Representative of any deceased Contributory is placed on the List, to add the Heirs or Devisees of such Contributory, nevertheless such Heirs or Devisees may be added as and when the Court thinks fit.

Power of Court to require Delivery of Property.

C. The Court may, at any Time after making an Order for winding up a Company, require any Contributory for the Time being settled on the List of Contributories, Trustee, Receiver, Banker, or Agent, or Officer of the Company to pay, deliver, convey, surrender, or transfer forthwith, or within such Time as the Court directs, to or into the Hands of the Official Liquidator, any Sum or Balance, Books, Papers, Estate, or Effects which happen to be in his Hands for the Time being, and to which the Company is *primâ facie* entitled.

CI. The Court may, at any Time after making an Order for

winding up the Company, make an Order on any Contributory for the Time being settled on the List of Contributories, directing payment to be made, in manner in the said Order mentioned, of any Monies due from him or from the Estate of the Person whom he represents to the Company, exclusive of any Monies which he or the Estate of the Person whom he represents may be liable to contribute by virtue of any Call made or to be made by the Court in pursuance of this Part of this Act; and it may, in making such Order, when the Company is not limited, allow to such Contributory by way of Set-off any Monies due to him or the Estate which he represents from the Company on any independent Dealing or Contract with the Company, but not any Monies due to him as a Member of the Company in respect of any Dividend or Profit: Power of Court to order Payment of Debts by Contributory.

Provided that when all the Creditors of any Company whether limited or unlimited are paid in full, any Monies due on any Account whatever to any Contributory from the Company may be allowed to him by way of Set-off against any subsequent Call or Calls.

CII. The Court may, at any Time after making an Order for winding up a Company, and either before or after it has ascertained the Sufficiency of the Assets of the Company, make Calls on and order Payment thereof by all or any of the Contributories for the Time being settled on the List of Contributories, to the Extent of their Liability, for Payment of all or any Sums it deems necessary to satisfy the Debts and Liabilities of the Company, and the Costs, Charges, and Expenses of winding it up, and for the Adjustment of the Rights of the Contributories amongst themselves, and it may, in making a Call, take into consideration the probability that some of the Contributories upon whom the same is made may partly or wholly fail to pay their respective Portions of the same. Power of Court to make Calls.

CIII. The Court may order any Contributory, Purchaser, or other Person from whom Money is due to the Company to pay the same into the Bank of *England* or any Branch thereof to the Account of the Official Liquidator instead of to the Official Liquidator, and such Order may be enforced in the same Manner as if it had directed Payment to the Official Liquidator. Power of Court to order Payment into Bank.

CIV. All Monies, Bills, Notes, and other Securities paid and delivered into the Bank of *England* or any Branch thereof in the event of a Company being wound up by the Court, shall be subject to such Order and Regulation for the keeping of the Account of such Monies and other Effects, and for the Payment and Delivery in or Investment and Payment and Delivery out of the same as the Court may direct. Regulation of Account with Court.

CV. If any Person made a Contributory as Personal Representative of a deceased Contributory makes default in paying Provision in case of represen-

tative Contributory not paying Monies ordered.

any Sum ordered to be paid by him, Proceedings may be taken for administering the Personal and Real Estates of such deceased Contributory, or either of such Estates, and of compelling Payment thereout of the Monies due.

Order conclusive Evidence.

CVI. Any Order made by the Court in pursuance of this Act upon any Contributory shall, subject to the Provisions herein contained for appealing against such Order, be conclusive Evidence that the Monies, if any, thereby appearing to be due or ordered to be paid are due, and all other pertinent Matters stated in such Order are to be taken to be truly stated as against all Persons, and in all Proceedings whatsoever, with the Exception of Proceedings taken against the Real Estate of any deceased Contributory, in which Case such Order shall only be *primâ facie* Evidence for the Purpose of charging his Real Estate, unless his Heirs or Devisees were on the List of Contributories at the Time of the Order being made.

Court may exclude Creditors not proving within certain Time.

CVII. The Court may fix a certain Day or certain Days on or within which Creditors of the Company are to prove their Debts or Claims, or to be excluded from the Benefit of any Distribution made before such Debts are proved.

Proceedings in the Court of the Vice Warden of the Stannaries on Proof of Debts.

CVIII. If in the course of proving the Debts and Claims of Creditors in the Court of the Vice Warden of the Stannaries any Debt or Claim is disputed by the Official Liquidator or by any Creditor or Contributory, or appears to the Court to be open to Question, the Court shall have Power, subject to Appeal as herein-after provided, to adjudicate upon it, and for that Purpose the said Court shall have and exercise all needful Powers of Inquiry touching the same by Affidavit or by oral Examination of Witnesses or of Parties, whether voluntarily offering themselves for Examination or summoned to attend by compulsory Process of the Court, or to produce Documents before the Court; and the Court shall also have Power, incidentally, to decide on the Validity and Extent of any Lien or Charge claimed by any Creditor on any Property of the Company in respect of such Debt, and to make Declarations of Right, binding on all Persons interested; and for the more satisfactory Determination of any Question of Fact, or mixed Question of Law and Fact arising on such Inquiry, the Vice Warden shall have Power, if he thinks fit, to direct and settle any Action or Issue to be tried either on the Common Law Side of his Court, or by a Common or Special Jury, before the Justices of Assize in and for the Counties of *Cornwall* or *Devon*, or at any Sitting of One of the Superior Courts in *London* or *Middlesex*, which Action or Issue shall accordingly be tried in due Course of Law, and without other or further Consent of Parties; and the Finding of the Jury in such Action or Issue shall be conclusive of the Facts found, unless the Judge who tried it makes known to the Vice

Warden that he was not satisfied with the Finding, or unless it appears to the Vice Warden that, in consequence of Miscarriage, Accident, or the subsequent Discovery of fresh material Evidence, such Finding ought not to be conclusive.

Court to adjust Rights of Contributories.

CIX. The Court shall adjust the Rights of the Contributories amongst themselves, and distribute any surplus that may remain amongst the Parties entitled thereto.

Court to order Costs.

CX. The Court may, in the event of the Assets being insufficient to satisfy the Liabilities, make an Order as to the Payment out of the Estate of the Company of the Costs, Charges, and Expenses incurred in winding up any Company in such Order of Priority as the Court thinks just.

Dissolution of Company.

CXI. When the Affairs of the Company have been completely wound up, the Court shall make an Order that the Company be dissolved from the Date of such Order, and the Company shall be dissolved accordingly.

Registrar to make Minute of Dissolution of Company.

CXII. Any Order so made shall be reported by the Official Liquidator to the Registrar, who shall make a Minute accordingly in his Books of the Dissolution of such Company.

Penalty on not reporting Dissolution of Company.

CXIII. If the Official Liquidator makes default in reporting to the Registrar, in the Case of a Company being wound up by the Court, the Order that the Company be dissolved, he shall be liable to a Penalty not exceeding Five Pounds for every Day during which he is so in default.

Petition to be Lis pendens.

CXIV. Any Petition for winding up a Company by the Court under this Act shall constitute a Lis pendens within the Terms of the Act passed in the Session holden in the Second and Third Years of the Reign of Her present Majesty, Chapter Eleven, and intituled *An Act for the better Protection of Purchasers against Judgments, Crown Debts, Lis pendens, and Fiats in Bankruptcy*, provided the same is duly registered in manner required by such Act concerning Suits in Equity. (*a*)

(*a*) Repealed by 30 & 31 Vict. c. 47, s. 1.

Extraordinary Powers of Court.

Power of Court to summon Persons before it suspected of having Property of Company.

CXV. The Court may, after it has made an Order for winding up the Company, summon before it any Officer of the Company or Person known or suspected to have in his Possession any of the Estate or Effects of the Company, or supposed to be indebted to the Company, or any Person whom the Court may deem capable of giving Information concerning the Trade, Dealings, Estate, or Effects of the Company; and the Court may require any such Officer or Person to produce any Books, Papers, Deeds, Writings, or other Documents in his Custody or Power relating to the Company; and if any Person so summoned, after being tendered a reasonable Sum for his Expenses,

refuses to come before the Court at the Time appointed, having no lawful Impediment (made known to the Court at the Time of its sitting, and allowed by it), the Court may cause such Person to be apprehended, and brought before the Court for Examination; nevertheless, in Cases where any Person claims any Lien on Papers, Deeds, or Writings or Documents produced by him, such Production shall be without Prejudice to such Lien, and the Court shall have Jurisdiction in the winding up to determine all Questions relating to such Lien.

Special Provisions as to Court of Vice Warden of the Stannaries.

CXVI. If, after an Order for winding up in the Court of the Vice Warden of the Stannaries, it appears that any Person claims Property in, or any Lien, Legal or Equitable, upon any of the Machinery, Materials, Ores, or Effects on the Mine, or on Premises occupied by the Company in connexion with the Mine, or to which the Company was, at the Time of the Order, *primâ facie* entitled, it shall be lawful for the Vice Warden or the Registrar to adjudicate upon such Claim on Interpleader in the Manner provided by Section Eleven of the Act passed in the Eighteenth Year of the Reign of Her present Majesty, Chapter Thirty-two; and any Action or Issue directed upon such Interpleader may, if the Vice Warden think fit, be tried in his Court or at the Assizes or the Sittings in *London* or *Middlesex*, before a Judge of One of the Superior Courts, in the Manner and on the Terms and Conditions herein-before provided in the Case of disputed Debts and Claims of Creditors.

Examination of Parties by Court.

CXVII. The Court may examine upon Oath, either by Word of Mouth or upon written Interrogatories, any Person appearing or brought before them in Manner aforesaid concerning the Affairs, Dealings, Estate, or Effects of the Company, and may reduce into Writing the Answers of every such Person, and require him to subscribe the same.

Power to arrest Contributory about to abscond, or to remove or conceal any of his Property.

CXVIII. The Court may, at any Time before or after it has made an Order for winding up a Company, upon Proof being given that there is probable Cause for believing that any Contributory to such Company is about to quit the United Kingdom, or otherwise abscond, or to remove or conceal any of his Goods or Chattels, for the Purpose of evading Payment of Calls, or for avoiding Examination in respect of the Affairs of the Company, cause such Contributory to be arrested, and his Books, Papers, Monies, Securities for Monies, Goods, and Chattels to be seized, and him and them to be safely kept until such Time as the Court may order.

Powers of Court cumulative.

CXIX. Any Powers by this Act conferred on the Court shall be deemed to be in addition to and not in restriction of any other Powers subsisting, either at Law or in Equity, of instituting Proceedings against any Contributory, or the Estate of any Contributory, or against any Debtor of the Company

for the Recovery of any Call or other Sums due from such Contributory or Debtor, or his Estate, and such Proceedings may be instituted accordingly.

Enforcement of and Appeal from Orders.

Power to enforce Orders.

CXX. All Orders made by the Court of Chancery in *England* or *Ireland* under this Act may be enforced in the same Manner in which Orders of such Court of Chancery made in any Suit pending therein may be enforced, and for the Purposes of this Part of this Act the Court of the Vice Warden of the Stannaries shall, in addition to its ordinary Powers, have the same Power of enforcing any Orders made by it as the Court of Chancery in *England* has in relation to Matters within the Jurisdiction of such Court, and for the last-mentioned Purposes the Jurisdiction of the Vice Warden of the Stannaries shall be deemed to be co-extensive in local Limits with the Jurisdiction of the Court of Chancery in *England*.

Power to order Contributories in Scotland to pay Calls.

CXXI. Where an Order, Interlocutor, or Decree has been made in *Scotland* for winding up a Company by the Court, it shall be competent to the Court in *Scotland* during Session, and to the Lord Ordinary on the Bills during Vacation, on Production by the Liquidators of a List certified by them of the Names of the Contributories liable in Payment of any Calls (*a*) which they may wish to enforce, and of the Amount due by each Contributory respectively, and of the Date when the same became due, to pronounce forthwith a Decree against such Contributories for Payment of the Sums so certified to be due by each of them respectively, with Interest from the said Date till Payment, at the Rate of Five Pounds *per Centum per Annum*, in the same Way and to the same Effect as if they had severally consented to Registration for Execution, on a Charge of Six Days, of a legal Obligation to pay such Calls and Interest; and such Decree may be extracted immediately, and no Suspension thereof shall be competent, except on Caution or Consignation, unless with special Leave of the Court or Lord Ordinary.

(*a*) Held that this applies only to calls made by the liquidators in the course of winding up—not to calls made by directors during the subsistence of the company. (*Mitchell*, 16th July 1863.)

Order made in England to be enforced in Ireland and Scotland.

CXXII. Any Order made by the Court in *England* for or in the Course of the winding up of a Company under this Act shall be enforced in *Scotland* and *Ireland* in the Courts that would respectively have had Jurisdiction in respect of such Company if the registered Office of the Company had been situate in *Scotland* or *Ireland*, and in the same Manner in all respects as if such Order had been made by the Courts that

are hereby required to enforce the same; and in like Manner Orders, Interlocutors, and Decrees made by the Court in *Scotland* for or in the Course of the winding up of a Company shall be enforced in *England* and *Ireland*, and Orders made by the Court in *Ireland* for or in the Course of winding up a Company shall be enforced in *England* and *Scotland* by the Courts which would respectively have had Jurisdiction in the Matter of such Company if the registered Office of the Company were situate in the Division of the United Kingdom where the Order is required to be enforced, and in the same Manner in all respects as if such Order had been made by the Court required to enforce the same in the Case of a Company within its own Jurisdiction.

Mode of dealing with Orders to be enforced by other Courts.

CXXIII. Where any Order, Interlocutor, or Decree made by one Court is required to be enforced by another Court, as herein-before provided, an Office Copy of the Order, Interlocutor, or Decree so made shall be produced to the proper Officer of the Court required to enforce the same, and the Production of such Office Copy shall be sufficient Evidence of such Order, Interlocutor, or Decree having been made, and thereupon such last-mentioned Court shall take such Steps in the Matter as may be requisite for enforcing such Order, Interlocutor, or Decree, in the same Manner as if it were the Order, Interlocutor, or Decree of the Court enforcing the same. (*a*)

(*a*) *Vide London and Scottish Bank*, 20th July 1866.

Appeals from Orders.

CXXIV. Rehearings of and Appeals from any Order or Decision made or given in the Matter of the winding up of a Company by any Court having Jurisdiction under this Act, may be had in the same Manner and subject to the same Conditions in and subject to which Appeals may be had from any Order or Decision of the same Court in Cases within its ordinary Jurisdiction; subject to this Restriction, that no such Rehearing or Appeal shall be heard unless Notice of the same is given within Three Weeks after any Order complained of has been made, in manner in which Notices of Appeal are ordinarily given, according to the Practice of the Court appealed from, unless such Time is extended by the Court of Appeal: Provided that it shall be lawful for the Lord Warden of the Stannaries, by a Special or General Order, to remit at once any Appeal allowed and regularly lodged with him against any Order or Decision of the Vice Warden made in the Matter of a winding up to the Court of Appeal in Chancery, which Court shall thereupon hear and determine such Appeal, and have Power to require all such Certificates of the Vice Warden, Records of Proceedings below, Documents, and Papers as the Lord Warden would or might have required upon the Hearing

of such Appeal, and to exercise all other the Jurisdiction and Powers of the Lord Warden specified in the Act of Parliament passed in the Eighteenth Year of the Reign of Her present Majesty, Chapter Thirty-two, and any Order so made by the Court of Appeal in Chancery shall be final, without any further Appeal.

Judicial Notice to be taken of Signature of Officers.

CXXV. In all Proceedings under this Part of this Act, all Courts, Judges, and Persons judicially acting, and all other Officers, Judicial or Ministerial, of any Court, or employed in enforcing the Process of any Court, shall take judicial Notice of the Signature of any Officer of the Courts of Chancery or Bankruptcy in *England* or in *Ireland*, or of the Court of Session in *Scotland*, or of the Registrar of the Court of the Vice Warden of the Stannaries, and also of the Official Seal or Stamp of the several Offices of the Courts of Chancery or Bankruptcy in *England* or *Ireland*, or of the Court of Session in *Scotland*, or of the Court of the Vice Warden of the Stannaries, when such Seal or Stamp is appended to or impressed on any Document made, issued, or signed under the Provisions of this Part of the Act, or any Official Copy thereof.

Special Commissioners for receiving Evidence.

CXXVI. The Commissioners of the Court of Bankruptcy and the Judges of the County Courts in *England* who sit at Places more than Twenty Miles from the General Post Office, and the Commissioners of Bankrupt and the assistant Barristers and Recorders in *Ireland* and the Sheriffs of Counties in *Scotland*, shall be Commissioners for the Purpose of taking Evidence under this Act in Cases where any Company is wound up in any Part of the United Kingdom, and it shall be lawful for the Court to refer the whole or any Part of the Examination of any Witnesses under this Act to any Person hereby appointed Commissioner, although such Commissioner is out of the Jurisdiction of the Court that made the Order or Decree for winding up the Company; and every such Commissioner shall, in addition to any Power of summoning and examining Witnesses, and requiring the Production or Delivery of Documents, and certifying or punishing Defaults by Witnesses, which he might lawfully exercise as a Commissioner of the Court of Bankruptcy, Judge of a County Court, Commissioner of Bankrupt, Assistant Barrister, or Recorder, or as a Sheriff of a County, have in the Matter so referred to him all the same Powers of summoning and examining Witnesses, and requiring the Production or Delivery of Documents, and punishing Defaults by Witnesses, and allowing Costs and Charges and Expenses to Witnesses, as the Court which made the Order for winding up the Company has; and the Examination so taken shall be returned or reported to such last-mentioned Court in such Manner as it directs.

Court may order the Examination of Persons in Scotland.

CXXVII. The Court may direct the Examination in *Scotland* of any Person for the Time being in *Scotland*, whether a Contributory of the Company or not, in regard to the Estate, Dealings, or Affairs of any Company in the course of being wound up, or in regard to the Estate, Dealings, or Affairs of any Person being a Contributory of the Company, so far as the Company may be interested therein by reason of his being such Contributory, and the Order or Commission to take such Examination shall be directed to the Sheriff of the County in which the Person to be examined is residing or happens to be for the Time, and the Sheriff shall summon such Person to appear before him at a Time and Place to be specified in the Summons for Examination upon Oath as a Witness or as a Haver, and to produce any Books, Papers, Deeds, or Documents called for which may be in his Possession or Power, and the Sheriff may take such Examination either orally or upon written Interrogatories, and shall report the same in Writing in the usual Form to the Court, and shall transmit with such Report the Books, Papers, Deeds, or Documents produced, if the Originals thereof are required and specified by the Order, or otherwise such Copies thereof or Extracts therefrom, authenticated by the Sheriff, as may be necessary; and in case any Person so summoned fails to appear at the Time and Place specified, or appearing refuses to be examined or to make the Production required, the Sheriff shall proceed against such Person as a Witness or Haver duly cited, and failing to appear or refusing to give Evidence or make Production may be proceeded against by the Law of *Scotland*; and the Sheriff shall be entitled to such and the like Fees, and the Witness shall be entitled to such and the like Allowances, as Sheriffs when acting as Commissioners under Appointment from the Court of Session and as Witnesses and Havers are entitled to in the like Cases according to the Law and Practice of *Scotland*: If any Objection is stated to the Sheriff by the Witness, either on the Ground of his Incompetency as a Witness, or as to the Production required to be made, or on any other Ground whatever, the Sheriff may, if he thinks fit, report such Objection to the Court, and suspend the Examination of such Witness until such Objection has been disposed of by the Court.

Affidavits, &c., may be sworn in Ireland, Scotland, or the Colonies before any competent Court or Person.

CXXVIII. Any Affidavit, Affirmation, or Declaration required to be sworn or made, under the Provisions or for the Purposes of this Part of this Act, may be lawfully sworn or made in *Great Britain* or *Ireland*, or in any Colony, Island, Plantation, or Place under the Dominion of Her Majesty in Foreign Parts, before any Court, Judge, or Person lawfully authorized to take and receive Affidavits, Affirmations, or Declarations, or before any of Her Majesty's Consuls or Vice-

Consuls, in any Foreign Parts out of Her Majesty's Dominions, and all Courts, Judges, Justices, Commissioners, and Persons acting judicially shall take Judicial Notice of the Seal or Stamp or Signature (as the Case may be) of any such Court, Judge, Person, Consul, or Vice-Consul attached, appended, or subscribed to any such Affidavit, Affirmation, or Declaration, or to any other Document to be used for the Purposes of this Part of this Act.

Voluntary Winding up of Company.

Circumstances under which Company may be wound up voluntarily.

CXXIX. A Company under this Act may be wound up voluntarily,

(1.) Whenever the Period, if any, fixed for the Duration of the Company by the Articles of Association expires, or whenever the Event, if any, occurs, upon the Occurrence of which it is provided by the Articles of Association that the Company is to be dissolved, and the Company in General Meeting has passed a Resolution requiring the Company to be wound up voluntarily:

(2.) Whenever the Company has passed a Special Resolution requiring the Company to be wound up voluntarily:

(3.) Whenever the Company has passed an Extraordinary Resolution to the Effect that it has been proved to their Satisfaction that the Company cannot by reason of its Liabilities continue its Business, and that it is advisable to wind up the same:

For the Purposes of this Act any Resolution shall be deemed to be Extraordinary which is passed in such Manner as would, if it had been confirmed by a subsequent Meeting, have constituted a Special Resolution as herein-before defined. (*a*)

(*a*) Held that the notice of meeting must show that it is intended to pass a resolution under the third subsection—if so intended (*Wilson*, 19th Feb. 1876). But sufficient to authorise a voluntary winding-up that it is called to consider the present position of the company, and to consider and resolve whether, under existing circumstances, the company should be wound up; and, if so resolved upon, to decide in what manner this should be done (*Sdeuard*, 10th March 1876).

Commencement of voluntary winding up.

CXXX. A voluntary winding up shall be deemed to commence at the Time of the passing of the Resolution authorizing such winding up.

Effect of voluntarily winding up.

CXXXI. Whenever a Company is wound up voluntarily the Company shall, from the Date of the Commencement of such winding up, cease to carry on its Business, except in so far as may be required for the beneficial winding up thereof,

winding up on Status of Company.

and all Transfers or Shares except Transfers made to or with the Sanction of the Liquidators, or Alteration in the Status of the Members of the Company taking place after the Commencement of such winding up shall be void, but its Corporate State and all its Corporate Powers shall, notwithstanding it is otherwise provided by its Regulations, continue until the Affairs of the Company are wound up.

Notice of Resolution to wind up voluntarily.

CXXXII. Notice of any Special Resolution or Extraordinary Resolution passed for winding up a Company voluntarily shall be given by Advertisement as respects Companies registered in *England* in the *London Gazette*, as respects Companies registered in *Scotland* in the *Edinburgh Gazette*, and as respects Companies registered in *Ireland* in the *Dublin Gazette*.

Consequences of voluntary winding up.

CXXXIII. The following Consequences shall ensue upon the voluntary winding up of a Company:

(1.) The Property of the Company shall be applied in satisfaction of its Liabilities *pari passu*, and, subject thereto, shall, unless it be otherwise provided by the Regulations of the Company, be distributed amongst the Members according to their Rights and Interests in the Company:

(2.) Liquidators shall be appointed for the Purpose of winding up the Affairs of the Company and distributing the Property: (*a*)

(3.) The Company in General Meeting shall appoint such Persons or Person as it thinks fit to be Liquidators or a Liquidator, and may fix the Remuneration to be paid to them or him:

(4.) If One Person only is appointed, all the Provisions herein contained in reference to several Liquidators shall apply to him:

(5.) Upon the Appointment of Liquidators, all the Power of the Directors shall cease, except in so far as the Company in General Meeting or the Liquidators may sanction the Continuance of such Powers:

(6.) When several Liquidators are appointed, every Power hereby given may be exercised by such One or more of them as may be determined at the Time of their Appointment, or in default of such Determination by any Number not less than Two:

(7.) The Liquidators may, without the Sanction of the Court, exercise all Powers by this Act given to the Official Liquidator:

(8.) The Liquidators may exercise the Powers herein-before given to the Court of settling the List of Contributories of the Company, and any List so settled

shall be *primâ facie* Evidence of the Liability of the Persons named therein to be Contributories:

(9.) The Liquidators may at any Time after the passing of the Resolution for winding up the Company, and before they have ascertained the Sufficiency of the Assets of the Company, call on all or any of the Contributories for the Time being settled on the List of Contributories to the Extent of their Liability to pay all or any Sums they deem necessary to satisfy the Debts and Liabilities of the Company, and the Costs, Charges, and Expenses of winding it up, and for the Adjustment of the Rights of the Contributories amongst themselves, (*b*) and the Liquidators may in making a Call take into Consideration the Probability that some of the Contributories upon whom the same is made may partly or wholly fail to pay their respective Portions of the same:

(10.) The Liquidators shall pay the Debts of the Company, and adjust the Rights of the Contributories amongst themselves.

(*a*) As to change of residence of liquidator from Scotland to England. (*Vide Robertson*, 20th Oct. 1875.)

(*b*) *Vide Paterson*, 2d March 1875.

Effect of winding up on Share Capital of Company limited by Guarantee.

CXXXIV. Where a Company limited by Guarantee, and having a Capital divided into Shares, is being wound up voluntarily, any Share Capital that may not have been called up shall be deemed to be Assets of the Company, and to be a Specialty Debt due from each Member to the Company to the Extent of any Sums that may be unpaid on any Shares held by him, and payable at such Time as may be appointed by the Liquidators.

Power of Company to delegate Authority to appoint Liquidators.

CXXXV. A Company about to be wound up voluntarily, or in the course of being wound up voluntarily, may, by an Extraordinary Resolution, delegate to its Creditors, or to any Committee of its Creditors, the Power of appointing Liquidators or any of them, and supplying any Vacancies in the Appointment of Liquidators, or may by a like Resolution enter into any Arrangement with respect to the Powers to be exercised by the Liquidators, and the Manner in which they are to be exercised; and any Act done by the Creditors, in pursuance of such delegated Power, shall have the same Effect as if it had been done by the Company.

Arrangement when binding on creditors.

CXXXVI. Any Arrangement entered into between a Company about to be wound up voluntarily, or in the course of being wound up voluntarily, and its Creditors, shall be binding on the Company if sanctioned by an Extraordinary Resolu-

tion, and on the Creditors if acceded to by Three Fourths in Number and Value of the Creditors, subject to such Right of Appeal as is herein-after mentioned.

Power of Creditor or Contributory to appeal.

CXXXVII. Any Creditor or Contributory of a Company that has in manner aforesaid entered into any Arrangement with its Creditors may, within Three Weeks from the Date of the Completion of such Arrangement, appeal to the Court against such Arrangement, and the Court may thereupon, as it thinks just, amend, vary, or confirm the same.

Power for Liquidators or Contributories in voluntary winding up to apply to Court.

CXXXVIII. Where a Company is being wound up voluntarily the Liquidators or any Contributor of the Company may apply to the Court in *England*, *Ireland*, or *Scotland*, or to the Lord Ordinary on the Bills in *Scotland* in Time of Vacation, to determine any Question arising in the Matter of such winding up, or to exercise, as respects the enforcing of Calls, or in respect of any other Matter, (*a*) all or any of the Powers which the Court might exercise if the Company were being wound up by the Court; and the Court or Lord Ordinary in the Case aforesaid, if satisfied that the Determination of such Question, or the required Exercise of Power, will be just and beneficial, may accede, wholly or partially, to such Application, on such Terms and subject to such Conditions as the Court thinks fit, or it may make such other Order, Interlocutor, or Decree on such Application as the Court thinks just.

(*a*) This does not authorise the Court to stay the proceedings of creditors, as in the case of a winding up by the Court (s. 85), or under the supervision of the Court (s. 151.) (*Vide Sdeuard*, 10th March 1876.)

Power of Liquidators to call General Meeting.

CXXXIX. Where a Company is being wound up voluntarily the Liquidators may, from Time to Time, during the Continuance of such winding up, summon General Meetings of the Company for the Purpose of obtaining the Sanction of the Company by Special Resolution or Extraordinary Resolution, or for any other Purposes they think fit; and in the event of the winding up continuing for more than One Year, the Liquidators shall summon a General Meeting of the Company at the End of the First Year, and of each succeeding Year from the Commencement of the winding up, or as soon thereafter as may be convenient, and shall lay before such Meeting an Account showing their Acts and Dealings, and the Manner in which the winding up has been conducted during the preceding Year.

Power to fill up Vacancy in Liquidators.

CXL. If any Vacancy occurs in the Office of Liquidators appointed by the Company, by Death, Resignation, or otherwise, the Company in General Meeting may, subject to any Arrangement they may have entered into with their Creditors, fill up such Vacancy, and a General Meeting for the Purpose

of filling up such Vacancy may be convened by the continuing Liquidators, if any, or by any Contributory of the Company, and shall be deemed to have been duly held if held in manner prescribed by the Regulations of the Company, or in such other Manner as may, on Application by the continuing Liquidator, if any, or by any Contributory of the Company, be determined by the Court.

Power of Court to appoint Liquidators.

CXLI. If from any Cause whatever there is no Liquidator acting in the Case of a voluntary winding up, the Court may, on the Application of a Contributory, appoint a Liquidator or Liquidators: The Court may also, on due Cause shown, remove any Liquidator, and appoint another Liquidator to act in the Matter of a Voluntary winding up.

Liquidators on Conclusion of winding up to make up an Account.

CXLII. As soon as the Affairs of the Company are fully wound up, the Liquidators shall make up an Account showing the Manner in which such winding up has been conducted, and the Property of the Company disposed of; and thereupon they shall call a General Meeting of the Company for the Purpose of having the Account laid before them and hearing any Explanation that may be given by the Liquidators: The Meeting shall be called by Advertisement, specifying the Time, Place, and Object of such Meeting; and such Advertisement shall be published One Month at least previously to the Meeting as respects Companies registered in *England* in the *London Gazette*, and as respects Companies registered in *Scotland* in the *Edinburgh Gazette*, and as respects Companies registered in *Ireland* in the *Dublin Gazette*.

Liquidators to report Meeting to Registrar.

CXLIII. The Liquidators shall make a Return to the Registrar of such Meeting having been held, and of the Date at which the same was held, and on the Expiration of Three Months from the Date of the Registration of such Return the Company shall be deemed to be dissolved: If the Liquidators make default in making such Return to the Registrar they shall incur a Penalty not exceeding Five Pounds for every Day during which such Default continues.

Cost of voluntary Liquidation.

CXLIV. All Costs, Charges, and Expenses properly incurred in the voluntary winding up of a Company, including the Remuneration of the Liquidators, shall be payable out of the Assets of the Company in priority to all other Claims.

Saving of Rights of Creditors.

CXLV. The voluntary winding up of a Company shall not be a Bar to the Right of any Creditor of such Company to have the same wound up by the Court, if the Court is of opinion that the Rights of such Creditor will be prejudiced by a voluntary winding up.

Power of Court to adopt Pro-

CXLVI. Where a Company is in course of being wound up voluntarily, and Proceedings are taken for the Purpose of having the same wound up by the Court, the Court may, if it

ceedings of voluntary winding up.

thinks fit, notwithstanding that it makes an Order directing the Company to be wound up by the Court, provide in such Order or in any other Order for the adoption of all or any of the Proceedings taken in the course of the voluntary winding up.

Winding up subject to the Supervision of the Court.

Power of Court, on Application, to direct winding up, subject to Supervision.

CXLVII. When a Resolution has been passed by a Company to wind up voluntarily, the Court may make an Order directing that the voluntary winding up should continue, but subject to such Supervision of the Court, and with such Liberty for Creditors, Contributories, or others, to apply to the Court, and generally upon such Terms and subject to such Conditions as the Court thinks just. (*a*)

(*a*) *Christie*, 18th March 1876.

Petition for winding up, subject to Supervision.

CXLVIII. A Petition, praying wholly or in part that a voluntary winding up should continue, but subject to the Supervision of the Court, and which winding up is herein-after referred to as a winding up Subject to the Supervision of the Court, shall, for the Purpose of giving Jurisdiction to the Court over Suits and Actions, be deemed to be a petition for winding up the Company by the Court.

Court may have regard to Wishes of Creditors.

CXLIX. The Court may, in determining whether a Company is to be wound up altogether by the Court or subject to the Supervision of the Court, in the Appointment of Liquidator or Liquidators, and in all other Matters relating to the winding up subject to Supervision, have regard to the Wishes of the Creditors or Contributories as proved to it by any sufficient Evidence, and may direct Meetings of the Creditors or Contributories, to be summoned, held, and regulated in such Manner as the Court directs for the Purpose of ascertaining their Wishes, and may appoint a Person to act as Chairman of any such Meeting, and to report the Result of such Meeting to the Court: In the Case of Creditors regard shall be had to the Value of the Debts due to each Creditor, and in the Case of Contributories to the Number of Votes conferred on each Contributory by the Regulations of the Company.

Power to Court to appoint additional Liquidators in winding up subject to Supervision.

CL. Where any Order is made by the Court for a winding up subject to the Supervision of the Court, the Court may, in such Order or in any subsequent Order, appoint any additional Liquidator or Liquidators; and any Liquidators so appointed by the Court shall have the same Powers, be subject to the same Obligations, and in all respects stand in the same Position as if they had been appointed by the Company: The Court may from Time to Time remove any Liquidators so appointed

by the Court, and fill up any Vacancy occasioned by such Removal, or by Death or Resignation.

Effect of Order of Court for winding up subject to Supervision.

CLI. Where an Order is made for a winding up subject to the Supervision of the Court, the Liquidators appointed to conduct such winding up may, subject to any Restrictions imposed by the Court, exercise all their Powers without the Sanction or Intervention of the Court, in the same Manner as if the Company were being wound up altogether voluntarily; but, save as aforesaid, any Order made by the Court for a winding up, subject to the Supervision of the Court, shall for all Purposes, including the staying of Actions, Suits, and other Proceedings, be deemed to be an Order of the Court for winding up the Company by the Court, and shall confer full Authority on the Court to make Calls, or to enforce Calls made by the Liquidators, and to exercise all other Powers which it might have exercised if an Order had been made for winding up the Company altogether by the Court, and in the Construction of the Provisions whereby the Court is empowered to direct any Act or Thing to be done to or in favour of the Official Liquidators, the expression Official Liquidators shall be deemed to mean the Liquidators conducting the winding up, subject to the Supervision of the Court.

Appointment in certain Cases of voluntary Liquidators to Office of Official Liquidators.

CLII. Where an Order has been made for the winding up of a Company subject to the Supervision of the Court, and such Order is afterwards superseded by an Order directing the Company to be wound up compulsorily, the Court may in such last-mentioned Order, or in any subsequent Order, appoint the voluntary Liquidators or any of them, either provisionally or permanently, and either with or without the addition of any other Persons, to be Official Liquidators.

Supplemental Provisions.

Dispositions after the Commencement of the winding up avoided.

CLIII. Where any Company is being wound up by the Court or subject to the Supervision of the Court all Dispositions of the Property, Effects, and Things in Action of the Company, and every Transfer of Shares, or Alteration in the Status of the Members of the Company made between the Commencement of the winding up and the Order for winding up, shall, unless the Court otherwise orders, be void.

The Books of the Company to be Evidence.

CLIV. Where any Company is being wound up, all Books, Accounts, and Documents of the Company and of the Liquidators shall, as between the Contributories of the Company, be *primâ facie* Evidence of the Truth of all Matters purporting to be therein recorded.

As to Disposal of

CLV. Where any Company has been wound up under this Act and is about to be dissolved, the Books, Accounts, and

Books, Accounts, and Documents of the Company.

Documents of the Company and of the Liquidators may be disposed of in the following Way; that is to say, where the Company has been wound up by or subject to the Supervision of the Court, in such Way as the Court directs, and where the Company has been wound up voluntarily, in such Way as the Company by an Extraordinary Resolution directs; but after the Lapse of Five Years from the Date of such Dissolution, no Responsibility shall rest on the Company, or the Liquidators, or anyone to whom the Custody of such Books, Accounts, and Documents has been committed, by reason that the same, or any of them, cannot be made forthcoming to any Party or Parties claiming to be interested therein.

Inspection of Books.

CLVI. Where an Order has been made for winding up a Company by the Court, or subject to the Supervision of the Court, the Court may make such Order for the Inspection by the Creditors and Contributories of the Company of its Books and Papers as the Court thinks just, and any Books and Papers in the Possession of the Company may be inspected by Creditors or Contributories, in conformity with the Order of the Court, but not further or otherwise.

Power of Assignee to sue.

CLVII. Any Person to whom any Thing in Action belonging to the Company is assigned, in pursuance of this Act, may bring or defend any Action or Suit relating to such Thing in Action in his own Name.

Debts of all Descriptions to be proved.

CLVIII. In the event of any Company being wound up under this Act, all Debts payable on a Contingency, and all Claims against the Company, present or future, certain or contingent, ascertained or sounding only in Damages, shall be admissible to Proof against the Company, a just Estimate being made, so far as is possible, of the Value of all such Debts or Claims as may be subject to any Contingency or sound only in Damages, or for some other Reason do not bear a certain Value.

General Scheme of Liquidation may be sanctioned.

CLIX. The Liquidators may, with the Sanction of the Court, where the Company is being wound up by the Court or subject to the Supervision of the Court, and with the Sanction of an Extraordinary Resolution of the Company where the Company is being wound up altogether voluntarily, pay any Classes of Creditors in full, or make such Compromise or other Arrangement as the Liquidators may deem expedient with Creditors or Persons claiming to be Creditors, or Persons having or alleging themselves to have any Claim, present or future, certain or contingent, ascertained or sounding only in Damages against the Company, or whereby the Company may be rendered liable.

Power to compromise.

CLX. The Liquidators may, with the Sanction of the Court, where the Company is being wound up by the Court or sub-

ject to the Supervision of the Court, and with the Sanction of an Extraordinary Resolution of the Company where the Company is being wound up altogether voluntarily, compromise all Calls and Liabilities to Calls, Debts and Liabilities capable of resulting in Debts, and all Claims, whether present or future, certain or contingent, ascertained or sounding only in Damages, subsisting or supposed to subsist between the Company and any Contributory or alleged Contributory, or other Debtor or Person apprehending Liability to the Company, and all Questions in any way relating to or affecting the Assets of the Company or the winding up of the Company, upon the Receipt of such Sums, payable at such Times, and generally upon such Terms as may be agreed upon, with Power for the Liquidators to take any Security for the Discharge of such Debts or Liabilities, and to give complete Discharges in respect of all or any such Calls, Debts, or Liabilities.

Power for Liquidators to accept Shares, &c. as a Consideration for Sale of Property of Company.

CLXI. Where any Company is proposed to be or is in the course of being wound up altogether voluntarily, and the Whole or a Portion of its Business or Property is proposed to be transferred or sold to another Company, the Liquidators of the first-mentioned Company may, with the Sanction of a Special Resolution of the Company by whom they were appointed, conferring either a general Authority on the Liquidators, or an Authority in respect of any particular Arrangement, receive in Compensation or part Compensation for such Transfer or Sale Shares, Policies, or other like Interests in such other Company, for the Purpose of Distribution amongst the Members of the Company being wound up, or may enter into any other Arrangement whereby the Members of the Company being wound up may, in lieu of receiving Cash, Shares, Policies, or other like Interests, or, in addition thereto, participate in the Profits of or receive any other Benefit from the purchasing Company; and any Sale made or Arrangement entered into by the Liquidators in pursuance of this Section shall be binding on the Members of the Company being wound up; subject to this Proviso that if any Member of the Company being wound up who has not voted in favour of the Special Resolution passed by the Company of which he is a Member at either of the Meetings held for passing the same expresses his Dissent from any such Special Resolution in Writing addressed to the Liquidators or One of them, and left at the registered Office of the Company not later than Seven Days after the Date of the Meeting at which such Special Resolution was passed, such dissentient Member may require the Liquidators to do One of the following Things as the Liquidators may prefer; that is to say, either to abstain from carrying such Resolution into effect, or to purchase the Inter-

est held by such dissentient Member at a Price to be determined in manner herein-after mentioned, such Purchase Money to be paid before the Company is dissolved, and to be raised by the Liquidators in such Manner as may be determined by Special Resolution: No Special Resolution shall be deemed invalid for the Purposes of this Section by Reason that it is passed antecedently to or concurrently with any Resolution for winding up the Company, or for appointing Liquidators; but if an Order be made within a Year for winding up the Company by or subject to the Supervision of the Court, such Resolution shall not be of any Validity unless it is sanctioned by the Court.

Mode of determining Price.

CLXII. The Price to be paid for the Purchase of the Interest of any dissentient Member may be determined by Agreement, but if the Parties dispute about the same, such Dispute shall be settled by Arbitration, and for the Purposes of such Arbitration the Provisions of "The Companies Clauses Consolidation Act, 1845," with respect to the Settlement of Disputes by Arbitration, shall be incorporated with this Act; and in the Construction of such Provisions this Act shall be deemed to be the Special Act, and "the Company" shall mean the Company that is being wound up, and any Appointment by the said incorporated Provisions directed to be made under the Hand of the Secretary, or any Two of the Directors, may be made under the Hand of the Liquidator, if only One, or any Two or more of the Liquidators if more than One.

Certain Attachments, Sequestrations, and Executions to be void.

CLXIII. Where any Company is being wound up by the Court or subject to the Supervision of the Court, any Attachment, Sequestration, Distress, or Execution put in force against the Estate or Effects of the Company after the Commencement of the winding up shall be void to all Intents.

Fraudulent Preference.

CLXIV. Any such Conveyance, Mortgage, Delivery of Goods, Payment, Execution, or other Act relating to Property as would, if made or done by or against any individual Trader, be deemed in the event of his Bankruptcy to have been made or done by way of undue or fraudulent Preference of the Creditors of such Trader, shall, if made or done by or against any Company, be deemed, in the event of such Company being wound up under this Act, to have been made or done by way of undue or fraudulent Preference of the Creditors of such Company, and shall be invalid accordingly; and for the Purposes of this Section the Presentation of a Petition for winding up a Company shall in the Case of a Company being wound up by the Court or subject to the Supervision of the Court, and a Resolution for winding up the Company shall in the Case of a voluntary winding up, be deemed to correspond with the Act of Bankruptcy in the Case of an

individual Trader; and any Conveyance or Assignment made by any Company formed under this Act of all its Estate and Effects to Trustees for the Benefit of all its Creditors shall be void to all Intents.

Power of Court to assess Damages against delinquent Directors and Officers.

CLXV. Where, in the course of the winding up of any Company under this Act, it appears that any past or present Director, Manager, Official, or other Liquidator, or any Officer of such Company, has misapplied or retained in his own Hands or become liable or accountable for any Moneys of the Company, or been guilty of any Misfeasance or Breach of Trust in relation to the Company, the Court may, on the Application of any Liquidator, or of any Creditor or Contributory of the Company, notwithstanding that the Offence is one for which the Offender is criminally responsible, examine into the Conduct of such Director, Manager, or other Officer, and compel him to repay any Moneys so misapplied or retained, or for which he has become liable or accountable, together with Interest after such Rate as the Court thinks just, or to contribute such Sums of Money to the Assets of the Company by way of Compensation in respect of such Misapplication, Retainer, Misfeasance, or Breach of Trust, as the Court thinks just.

Penalty on Falsification of Books.

CLXVI. If any Director, Officer, or Contributory of any Company wound up under this Act destroys, mutilates, alters, or falsifies any Books, Papers, Writings, or Securities, or makes or is privy to the making of any false or fraudulent Entry in any Register, Book of Account, or other Document belonging to the Company with Intent to defraud or deceive any Person, every Person so offending shall be deemed to be guilty of a Misdemeanour, and upon being convicted shall be liable to Imprisonment for any Term not exceeding Two Years, with or without Hard Labour.

Prosecution of delinquent Directors in the Case of winding up by Court.

CLXVII. Where any Order is made for winding up a Company by the Court or subject to the Supervision of the Court, if it appear in the course of such winding up that any past or present Director, Manager, Officer, or Member of such Company has been guilty of any Offence in relation to the Company for which he is criminally responsible, the Court may, on the Application of any Person interested in such winding up, or of its own Motion, direct the Official Liquidators, or the Liquidators, (as the Case may be,) to institute and conduct a Prosecution or Prosecutions for such Offence, and may order the Costs and Expenses to be paid out of the Assets of the Company.

Prosecution of delinquent

CLXVIII. Where a Company is being wound up altogether voluntarily, if it appear to the Liquidators conducting such winding up that any past or present Director, Manager, Offi-

Directors, &c., in case of voluntary winding up.

cer, or Member of such Company has been guilty of any Offence in relation to the Company for which he is criminally responsible, it shall be lawful for the Liquidators, with the previous Sanction of the Court, to prosecute such Offender, and all Expenses properly incurred by them in such Prosecution shall be payable out of the Assets of the Company in priority to all other Liabilities.

Penalty of Perjury.

CLXIX. If any Person, upon any Examination upon Oath or Affirmation authorized under this Act, or in any Affidavit, Deposition, or solemn Affirmation in or about the winding up of any Company under this Act, or otherwise in or about any Matter arising under this Act, wilfully and corruptly gives false Evidence, he shall, upon Conviction, be liable to the Penalties of wilful Perjury.

Power of Courts to make Rules.

Power of Lord Chancellor of Great Britain to make Rules.

CLXX. In *England* the Lord Chancellor of *Great Britain*, with the Advice and Consent of the Master of the Rolls, and any One of the Vice Chancellors for the Time being, or with the Advice and Consent of any Two of the Vice Chancellors, may, as often as Circumstances require, make such Rules concerning the Mode of Proceeding to be had for winding up a Company in the Court of Chancery as may from Time to Time seem necessary, but until such Rules are made the general Practice of the Court of Chancery, including the Practice hitherto in use in winding up Companies, shall, so far as the same is applicable and not inconsistent with this Act, apply to all Proceedings for winding up a Company.

Power of Court of Session in Scotland to make Rules.

CLXXI. In *Scotland* the Court of Session may make such Rules concerning the Mode of winding up as may be necessary by Act of Sederunt; but, until such Rules are made, the general Practice of the Court of Session in Suits pending in such Courts shall, so far as the same is applicable, and not inconsistent with this Act, apply to all Proceedings for winding up a Company, and Official Liquidators shall in all respects be considered as possessing the same Powers as any Trustee on a Bankrupt Estate. (*a*)

(*a*) As to the official liquidator's powers and duties. *Vide* s. 94 and 95.

Power to make Rules in Stannaries Court.

CLXXII. The Vice Warden of the Stannaries may from Time to Time, with the Consent provided for by Section Twenty-three of the Act of Eighteenth of *Victoria*, Chapter Thirty-two, make Rules for carrying into effect the Powers conferred by this Act upon the Court of the Vice Warden, but, subject to such Rules, the general Practice of the said Court and of the Registrar's Office in the said Court, including the present

Practice of the said Court in winding up Companies may be applied to all Proceedings under this Act; the said Vice Warden may likewise, with the same Consent, make from Time to Time Rules for specifying the Fees to be taken in his said Court in Proceedings under this Act; and any Rules so made shall be of the same Force as if they had been enacted in the Body of this Act; and the Fees paid in respect of Proceeding taken under this Act, including Fees taken under "The Joint Stock Companies Act, 1856," in the Matter of winding up Companies, shall be applied exclusively towards Payment of such additional Officers, or such Increase of the Salaries of existing Officers, or Pensions to retired Officers, or such other needful Expenses of the Court, as the Lord Warden of the Stannaries shall from Time to Time, on the Application of the Vice Warden or otherwise, think fit to direct, sanction, or assign, and meanwhile shall be kept as a separate Fund apart from the ordinary Fees of the Court arising from other Business, to await such Direction and Order of the Lord Warden herein, and to accumulate by Investment in Government Securities until the whole shall have been so appropriated.

Power of Lord Chancellor of Ireland to make Rules.

CLXXIII. In *Ireland* the Lord Chancellor of *Ireland* may, as respects the winding up of Companies in *Ireland*, with the Advice and Consent of the Master of the Rolls in *Ireland*, exercise the same Power of making Rules as is by this Act herein-before given to the Lord Chancellor of *Great Britain*; but until such Rules are made the general Practice of the Court of Chancery in *Ireland*, including the Practice hitherto in use in *Ireland* in winding up Companies, shall, so far as the same is applicable and not inconsistent with this Act, apply to all Proceedings for winding up a Company.

PART V.

Registration Office.

Constitution of Registration Office.

CLXXIV. The Registration of Companies under this Act shall be conducted as follows; (that is to say,)

(1.) The Board of Trade may from Time to Time appoint such Registrars, Assistant Registrars, Clerks, and Servants as they may think necessary for the Registration of Companies under this Act, and remove them at pleasure:

(2.) The Board of Trade may make such Regulations as they think fit with respect to the Duties to be performed by any such Registrars, Assistant Registrars, Clerks, and Servants as aforesaid:

(3.) The Board of Trade may from Time to Time determine

the Places at which Offices for the Registration of Companies are to be established, so that there be at all Times maintained in each of the Three Parts of the United Kingdom at least One such Office, and that no Company shall be registered except at an Office within that Part of the United Kingdom in which by the Memorandum of Association the registered Office of the Company is declared to be established; and the Board may require that the Registrar's Office of the Court of the Vice Warden of the Stannaries shall be one of the Offices for the Registration of Companies formed for working Mines within the Jurisdiction of the Court:

(4.) The Board of Trade may from Time to Time direct a Seal or Seals to be prepared for the Authentication of any Documents required for or connected with the Registration of Companies:

(5.) Every person may inspect the Documents kept by the Registrar of Joint Stock Companies; and there shall be paid for such Inspection such Fees as may be appointed by the Board of Trade, not exceeding One Shilling for each Inspection; and any Person may require a Certificate of the Incorporation of any Company, or a Copy or Extract of any other Document or any Part of any other Document, to be certified by the Registrar; and there shall be paid for such Certificate of Incorporation, certified Copy, or Extract such Fees as the Board of Trade may appoint, not exceeding Five Shillings for the Certificate of Incorporation, and not exceeding Sixpence for each Folio of such Copy or Extract, or in *Scotland* for each Sheet of Two hundred Words:

(6.) The existing Registrar, Assistant Registrars, Clerks, and other Officers and Servants in the Office for the Registration of Joint Stock Companies shall, during the Pleasure of the Board of Trade, hold the Offices and receive the Salaries hitherto held and received by them, but they shall in the Execution of their Duties conform to any Regulations that may be issued by the Board of Trade:

(7.) There shall be paid to any Registrar, Assistant Registrar, Clerk, or Servant that may hereafter be employed in the Registration of Joint Stock Companies such Salary as the Board of Trade may, with the Sanction of the Commissioners of the Treasury, direct:

(8.) Whenever any Act is herein directed to be done to or by the Registrar of Joint Stock Companies, such

Act shall, until the Board of Trade otherwise directs, be done in *England* to or by the existing Registrar of Joint Stock Companies, or in his Absence to or by such Person as the Board of Trade may for the Time being authorize; in *Scotland* to or by the existing Registrar of Joint Stock Companies in *Scotland;* and in *Ireland* to or by the existing Assistant Registrar of Joint Stock Companies for *Ireland,* or by such Person as the Board of Trade may for the Time being authorize in *Scotland* or *Ireland* in the Absence of the Registrar; but in the event of the Board of Trade altering the Constitution of the existing Registry Office, such Act shall be done to or by such Officer or Officers and at such Place or Places with reference to the local Situation of the registered Offices of the Companies to be registered as the Board of Trade may appoint.

PART VI.

Application of Act to Companies registered under the Joint Stock Companies Acts.

Definition of Joint Stock Companies Acts.

CLXXV. The Expression "Joint Stock Companies Acts," as used in this Act shall mean "The Joint Stock Companies Act, 1856," "The Joint Stock Companies Acts, 1856, 1857," "The Joint Stock Banking Companies Act, 1857," and "The Act to enable Joint Stock Banking Companies to be formed on the Principle of Limited Liability," or any one or more of such Acts, as the Case may require; but shall not include the Act passed in the Eighth Year of the Reign of Her present Majesty, Chapter One hundred and ten, and intituled *An Act for the Registration, Incorporation, and Regulation of Joint Stock Companies.*

Application of Act to Companies formed under Joint Stock Companies Acts.

CLXXVI. Subject as herein-after mentioned, this Act, with the Exception of Table A. in the First Schedule, shall apply to Companies formed and registered under the said Joint Stock Companies Acts, or any of them, in the same Manner in the Case of a Limited Company as if such Company had been formed and registered under this Act as a Company limited by Shares, and in the Case of a Company other than a Limited Company as if such Company had been formed and registered as an Unlimited Company under this Act, with this Qualification, that wherever Reference is made expressly or impliedly to the Date of Registration, such Date shall be deemed to refer to the Date at which such Companies were respectively registered under the said Joint Stock Companies

Acts or any of them, and the Power of altering Regulations by Special Resolution given by this Act shall, in the Case of any Company formed and registered under the said Joint Stock Companies Acts or any of them, extend to altering any Provisions contained in the Table marked B. annexed to "The Joint Stock Companies Act, 1856," and shall also in the Case of an Unlimited Company formed and registered as last aforesaid extend to altering any Regulations relating to the Amount of Capital or its Distribution into Shares, notwithstanding such Regulations are contained in the Memorandum of Association.

Application of Act to Companies registered under Joint Stock Companies Acts.

CLXXVII. This Act shall apply to Companies registered but not formed under the said Joint Stock Companies Acts or any of them in the same Manner as it is herein-after declared to apply to Companies registered but not formed under this Act, with this Qualification, that wherever Reference is made expressly or impliedly to the Date of Registration, such Date shall be deemed to refer to the Date at which such Companies were respectively registered under the said Joint Stock Companies Acts or any of them.

Mode of transferring Shares.

CLXXVIII. Any Company registered under the said Joint Stock Companies Acts or any of them may cause its Shares to be transferred in manner hitherto in use, or in such other Manner as the Company may direct.

PART VII.

Companies authorized to register under this Act.

Regulations as to Registration of existing Companies.

CLXXIX. The following Regulations shall be observed with respect to the Registration of Companies under this Part of this Act; (that is to say,)

(1.) No Company having the Liability of its Members limited by Act of Parliament or Letters Patent, and not being a Joint Stock Company as herein-after defined, shall register under this Act in pursuance of this Part thereof:

(2.) No Company having the Liability of its Members limited by Act of Parliament or by Letters Patent shall register under this Act in pursuance of this Part thereof as an Unlimited Company, or as a Company limited by Guarantee:

(3.) No Company that is not a Joint Stock Company as herein-after defined, shall in pursuance of this Part of this Act register under this Act as a Company limited by Shares:

(4.) No Company shall register under this Act in pursuance of this Part thereof unless an Assent to its so registering

is given by a Majority of such of its Members as may be present, personally, or by Proxy, in Cases where Proxies are allowed by the Regulations of the Company, at some General Meeting summoned for the Purpose:

(5.) Where a Company not having the liability of its Members limited by Act of Parliament or Letters Patent is about to register as a Limited Company, the Majority required to assent as aforesaid shall consist of not less than Three Fourths of the Members present, personally or by Proxy, at such last-mentioned General Meeting:

(6.) Where a Company is about to register as a Company limited by Guarantee the Assent to its being so registered shall be accompanied by a Resolution declaring that each Member undertakes to contribute to the Assets of the Company, in the event of the same being wound up, during the Time that he is a Member, or within One Year afterwards, for Payment of the Debts and Liabilities of the Company contracted before the Time at which he ceased to be a Member, and of the Costs, Charges, and Expenses of winding up the Company, and for the Adjustment of the Rights of the Contributories amongst themselves, such Amount as may be required, not exceeding a specified Amount:

In computing any Majority under this Section when a Poll is demanded regard shall be had to the Number of Votes to which each Member is entitled according to the Regulations of the Company of which he is a Member.

Companies capable of being registered.

CLXXX. With the above Exceptions, and subject to the foregoing Regulations, every Company existing at the Time of the Commencement of this Act, including any Company registered under the said Joint Stock Companies Acts, consisting of Seven or more Members, and any Company hereafter formed in pursuance of any Act of Parliament other than this Act, or of Letters Patent, or being a Company engaged in working Mines within and subject to the Jurisdiction of the Stannaries, or being otherwise duly constituted by Law, and consisting of Seven or more Members, may at any Time hereafter register itself under this Act as an Unlimited Company, or a Company limited by Shares, or a Company limited by Guarantee; and no such Registration shall be invalid by reason that it has taken place with a view to the Company being wound up.

Definition of Joint Stock Company.

CLXXXI. For the Purposes of this Part of this Act, so far as the same relates to the Description of Companies empowered to register as Companies limited by Shares, a Joint Stock Company shall be deemed to be a Company having a permanent paid-up or nominal Capital of fixed Amount, divided into

Shares, also of fixed Amount, or held and transferable as Stock, or divided and held partly in one way and partly in the other, and formed on the Principle of having for its Members the Holders of Shares in such Capital, or the Holders of such Stock, and no other Persons; and such Company when registered with Limited Liability under this Act shall be deemed to be a Company limited by Shares.

Proviso as to Banking Company.

CLXXXII. No Banking Company claiming to issue Notes in the United Kingdom shall be entitled to Limited Liability in respect of such Issue, but shall continue subject to Unlimited Liability in respect thereof, and, if necessary, the Assets shall be marshalled for the Benefit of the General Creditors, and the Members shall be liable for the whole Amount of the Issue, in addition to the Sum for which they would be liable as Members of a Limited Company.

Requisitions for Registration by Companies.

CLXXXIII. Previously to the Registration in pursuance of this Part of this Act of any Joint Stock Company there shall be delivered to the Registrar the following Documents; (that is to say,)

(1.) A List showing the Names, Addresses, and Occupations of all Persons who on a Day named in such List, and not being more than Six clear Days before the Day of Registration, were Members of such Company, with the Addition of the Shares held by such Persons respectively, distinguishing, in Cases where such Shares are numbered, each Share by its Number:

(2.) A Copy of any Act of Parliament, Royal Charter, Letters Patent, Deed of Settlement, Contract of Copartnery, Cost Book Regulations, or other Instrument constituting or regulating the Company:

(3.) If any such Joint Stock Company is intended to be registered as a Limited Company, the above List and Copy shall be accompanied by a Statement specifying the following particulars; that is to say,

The nominal Capital of the Company and the Number of Shares into which it is divided:

The Number of Shares taken and the Amount paid on each Share:

The Name of the Company, with the Addition of the Word "Limited" as the last Word thereof:

With the Addition, in the Case of a Company intended to be registered as a Company limited by Guarantee, of the Resolution declaring the Amount of the Guarantee.

Requisitions for Registration by

CLXXXIV. Previously to the Registration in pursuance of this Part of this Act of any Company not being a Joint Stock Company there shall be delivered to the Registrar a List

showing the Names, Addresses, and Occupations of the Directors or other Managers (if any) of the Company, also a Copy of any Act of Parliament, Letters Patent, Deed of Settlement, Contract of Copartnery, Cost Book Regulations, or other Instrument, constituting or regulating the Company, with the Addition, in the Case of a Company intended to be registered as a Company limited by Guarantee, of the Resolution declaring the Amount of Guarantee. existing Company not being a Joint Stock Company.

CLXXXV. Where a Joint Stock Company authorized to register under this Act has had the whole or any Portion of its Capital converted into Stock, such Company shall, as to the Capital so converted, instead of delivering to the Registrar a Statement of Shares, deliver to the Registrar a Statement of the Amount of Stock belonging to the Company, and the Names of the Persons who were Holders of such Stock, on some Day to be named in the Statement, not more than Six clear Days before the Day of Registration. Power for existing Company to register Amount of Stock instead of Shares.

CLXXXVI. The Lists of Members and Directors and any other Particulars relating to the Company hereby required to be delivered to the Registrar shall be verified by a Declaration of the Directors of the Company delivering the same, or any Two of them, or of any Two other Principal Officers of the Company, made in pursuance of the Act passed in the Sixth Year of the Reign of His late Majesty King *William* the Fourth, Chapter Sixty-two. Authentication of Statements of existing Companies.

CLXXXVII. The Registrar may require such Evidence as he thinks necessary for the Purpose of Satisfying himself whether an existing Company is or not a Joint Stock Company as herein-before defined. Registrar may require Evidence as to nature of Company.

CLXXXVIII. Every Banking Company existing at the Date of the passing of this Act which registers itself as a Limited Company shall, at least Thirty Days previous to obtaining a Certificate of Registration with Limited Liability, give Notice that it is intended so to register the same to every Person and Partnership Firm who have a Banking Account with the Company, and such Notice shall be given either by delivering the same to such Person or Firm, or leaving the same or putting the same into the Post addressed to him or them at such Address as shall have been last communicated or otherwise become known as his or their Address to or by the Company; and in case the Company omits to give any such Notice as is herein-before required to be given, then as between the Company and the Person or Persons only who are for the Time being interested in the Account in respect of which such Notice ought to have been given, and so far as respects such Account and all Variations thereof down to the Time at which such Notice shall be given, but not further or otherwise, the Certi- On Registration of Banking Company with Limited Liability Notice to be given to Customers.

ficate of Registration with Limited Liability shall have no Operation.

Exemption of certain Companies from Payment of Fees.

CLXXXIX. No fees shall be charged in respect of the Registration in pursuance of this Part of this Act of any Company in Cases where such Company is not registered as a Limited Company, or where previously to its being registered as a Limited Company the Liability of the Shareholders was limited by some other Act of Parliament or by Letters Patent.

Power to Company to change Name.

CXC. Any Company authorized by this Part of this Act to register with Limited Liability shall, for the Purpose of obtaining Registration with Limited Liability, change its Name, by adding thereto the word "Limited."

Certificate of Registration of existing Companies.

CXCI. Upon compliance with the Requisitions in this Part of this Act contained with respect to Registration, and on Payment of such Fees, if any, as are payable under the Tables marked B. and C. in the First Schedule hereto, the Registrar shall certify under his Hand that the Company so applying for Registration is incorporated as a Company under this Act, and, in the Case of a Limited Company, that it is limited, and thereupon such Company shall be incorporated, and shall have perpetual Succession and a Common Seal, with Power to hold Lands; and any Banking Company in *Scotland* so incorporated, shall be deemed and taken to be a Bank incorporated, constituted, or established by or under Act of Parliament.

Certificate to be Evidence of compliance with Act.

CXCII. A Certificate of Incorporation given at any Time to any Company registered in pursuance of this Part of this Act shall be conclusive Evidence that all the Requisitions herein contained in respect of Registration under this Act have been complied with, and that the Company is authorized to be registered under this Act as a Limited or Unlimited Company, as the Case may be, and the Date of Incorporation mentioned in such Certificate shall be deemed to be the Date at which the Company is incorporated under this Act.

Transfer of Property to Company.

CXCIII. All such Property, Real and Personal, including all Interests and Rights in, to, and out of Property, Real and Personal, and including Obligations and Things in Action, as may belong to or be vested in the Company at the date of its Registration under this Act, shall on Registration pass to and vest in the Company as incorporated under this Act for all the Estate and Interest of the Company therein.

Registration under this Act not to affect Obligations incurred previously to Registration.

CXCIV. The Registration in pursuance of this Part of this Act of any Company shall not affect or prejudice the Liability of such Company to have enforced against it, or its Right to enforce, any Debt or Obligation incurred, or any Contract entered into, by, to, with, or on behalf of such Company previously to such Registration.

CXCV. All such Actions, Suits, and other legal Proceedings as may at the Time of the Registration of any Company registered in pursuance of this Part of this Act have been commenced by or against such Company, or the Public Officer or any Member thereof, may be continued in the same Manner as if such Registration had not taken place; nevertheless, Execution shall not issue against the Effects of any individual Member of such Company upon any Judgment, Decree, or Order obtained in any Action, Suit, or Proceeding so commenced as aforesaid; but in the event of the Property and Effects of the Company being insufficient to satisfy such Judgment, Decree, or Order, an Order may be obtained for winding up the Company. Continuation of existing Actions and Suits.

CXCVI. When a Company is registered under this Act in pursuance of this Part thereof, all Provisions contained in any Act of Parliament, Deed of Settlement, Contract of Copartnery, Cost Book Regulations, Letters Patent, or other Instrument constituting or regulating the Company, including, in the Case of a Company registered as a Company Limited by Guarantee, the Resolution declaring the Amount of the Guarantee, shall be deemed to be Conditions and Regulations of the Company, in the same Manner and with the same Incidents as if they were contained in a registered Memorandum of Association and Articles of Association; and all the Provisions of this Act shall apply to such Company, and the Members, Contributories, and Creditors thereof, in the same Manner in all respects as if it had been formed under this Act, subject to the Provisions following; (that is to say,) Effect of Registration under Act.

(1.) That Table A. in the First Schedule to this Act shall not, unless adopted by Special Resolution, apply to any Company registered under this Act in pursuance of this Part thereof:

(2.) That the Provisions of this Act relating to the numbering of Shares shall not apply to any Joint Stock Company whose Shares are not numbered:

(3.) That no Company shall have Power to alter any Provision contained in any Act of Parliament relating to the Company:

(4.) That no Company shall have Power, without the Sanction of the Board of Trade, to alter any Provision contained in any Letters Patent relating to the Company:

(5.) That in the event of the Company being wound up, every Person shall be a Contributory, in respect of the Debts and Liabilities of the Company contracted prior to Registration, who is Liable, at Law or in Equity, to pay or contribute to the Payment of any

Debt or Liability of the Company contracted prior to Registration, or to pay or contribute to the Payment of any Sum for the Adjustment of the Rights of the Members amongst themselves in respect of any such Debt or Liability; or to pay or contribute to the Payment of the Costs, Charges, and Expenses of winding up the Company, so far as relates to such Debts or Liabilities as aforesaid; and every such Contributory shall be liable to contribute to the Assets of the Company, in the course of the winding up, all Sums due from him in respect of any such Liability as aforesaid; and in the event of the Death, Bankruptcy, or Insolvency of any such Contributory as last aforesaid, or Marriage of any such Contributory being a Female, the Provisions herein-before contained with respect to the Representatives, Heirs, and Devisees of deceased Contributories, and with reference to the Assignees of bankrupt or insolvent Contributories, and to the Husbands of married Contributories, shall apply:

(6.) That nothing herein contained shall authorize any Company to alter any such Provisions contained in any Deed of Settlement, Contract of Copartnery, Cost Book Regulations, Letters Patent, or other Instrument constituting or regulating the Company, as would, if such Company had originally been formed under this Act, have been contained in the Memorandum of Association, and are not authorized to be altered by this Act:

But nothing herein contained shall derogate from any Power of altering its Constitution or Regulations which may be vested in any Company registering under this Act in pursuance of this Part thereof by virtue of any Act of Parliament, Deed of Settlement, Contract of Copartnery, Letters Patent, or other Instrument constituting or regulating the Company.

Power of Court to restrain further Proceedings.

CXCVII. The Court may, at any Time after the Presentation of a Petition for winding up a Company registered in pursuance of this Part of this Act, and before making an Order for winding up the Company, upon the Application by Motion of any Creditor of the Company, restrain further Proceedings in any Action, Suit, or legal Proceeding against any Contributory of the Company as well as against the Company as herein-before provided, upon such Terms as the Court thinks fit.

Order for winding up Company.

CXCVIII. Where an Order has been made for winding up a Company registered in pursuance of this Part of the Act, in addition to the Provisions herein-before contained, it is hereby further provided that no Suit, Action, or other legal Proceeding

shall be commenced or proceeded with against any Contributory of the Company in respect of any Debt of the Company, except with the Leave of the Court, and subject to such Terms as the Court may impose.

PART VIII.

Application of Act to unregistered Companies.

Winding up of unregistered Companies.

CXCIX. Subject as herein-after mentioned, any Partnership, Association, or Company, except Railway Companies, incorporated by Act of Parliament, consisting of more than Seven Members, and not registered under this Act, and herein-after included under the Term unregistered Company, may be wound up under this Act, and all the Provisions of this Act with respect to winding up shall apply to such Company, with the following Exceptions and Additions: (*a*)

(1.) An unregistered Company shall, for the Purpose of determining the Court having Jurisdiction in the Matter of the winding up, be deemed to be registered in that Part of the United Kingdom where its principal Place of Business is situate; or, if it has a principal Place of Business situate in more than One Part of the United Kingdom, then in each Part of the United Kingdom where it has a principal Place of Business; moreover the principal Place of Business of an unregistered Company, or (where it has a principal Place of Business situate in more than One Part of the United Kingdom) such One of its principal Places of Business as is situate in that Part of the United Kingdom in which Proceedings are being instituted, shall for all the Purposes of the winding up of such Company be deemed to be the registered Office of the Company:

(2.) No unregistered Company shall be wound up under this Act voluntarily or subject to the Supervision of the Court:

(3.) The Circumstances under which an unregistered Company may be wound up are as follows; (that is to say,)

(*a*.) Whenever the Company is dissolved, or has ceased to carry on Business, or is carrying on Business only for the Purpose of winding up its Affairs;

(*b*.) Whenever the Company is unable to pay its Debts;

(*c*.) Whenever the Court is of opinion that it is just and equitable that the Company should be wound up.

(4.) An unregistered Company shall, for the Purposes of this Act, be deemed to be unable to pay its Debts,

(*a.*) Whenever a Creditor to whom the Company is indebted, at Law or in Equity, by Assignment or otherwise, in a Sum exceeding Fifty Pounds then due, has served on the Company, by leaving the same at the principal Place of Business of the Company, or by delivering to the Secretary or some Director or principal Officer of the Company, or by otherwise serving the same in such Manner as the Court may approve or direct, a Demand under his Hand requiring the Company to pay the Sum so due, and the Company has for the space of Three Weeks succeeding the Service of such Demand neglected to pay such Sum, or to secure or compound for the same to the Satisfaction of the Creditor:

(*b.*) Whenever any Action, Suit, or other Proceeding has been instituted against any Member of the Company for any Debt or Demand due, or claimed to be due, from the Company, or from him in his Character of Member of the Company, and Notice in Writing of the Institution of such Action, Suit, or other legal Proceeding having been served upon the Company by leaving the same at the principal Place of Business of the Company, or by delivering it to the Secretary, or some Director, Manager, or principal Officer of the Company, or by otherwise serving the same in such Manner as the Court may approve or direct, the Company has not within Ten Days after Service of such Notice paid, secured, or compounded for such Debt or Demand, or procured such Action, Suit, or other legal Proceeding to be stayed, or indemnified the Defendant to his reasonable Satisfaction against such Action, Suit, or other legal Proceeding, and against all Costs, Damages, and Expenses to be incurred by him by reason of the same:

(*c.*) Whenever, in *England* or *Ireland*, Execution or other Process issued on a Judgment, Decree, or Order obtained in any Court in favour of any Creditor in any Proceeding at Law or in Equity instituted by such Creditor against the Company, or any Member thereof as such, or against any Person authorized to be sued as nominal Defendant on behalf of the Company, is returned unsatisfied:

(*d.*) Whenever, in the Case of an unregistered Company engaged in working Mines within and subject to the Jurisdiction of the Stannaries, a customary Decree or Order absolute for the Sale of the Ma-

chinery, Materials, and Effects of such Mine has been made in a Creditor's Suit in the Court of the Vice Warden:

(*e.*) Whenever, in *Scotland*, the Induciæ of a Charge for Payment on an Extract Decree, or an Extract registered Bond, or an Extract registered Protest, have Expired without Payment being made:

(*f.*) Whenever it is otherwise proved to the Satisfaction of the Court that the Company is unable to pay its Debts.

(*a*) As to procedure. (*Vide Aberdeen Provision Society*, 19th Dec. 1863.)

Who to be deemed a Contributory in the event of Company being wound up.

CC. In the event of an unregistered Company being wound up every Person shall be deemed to be a Contributory who is liable at Law, or in Equity, to pay or contribute to the Payment of any Debt or Liability of the Company, or to pay or contribute to the Payment of any Sum for the Adjustment of the Rights of the Members amongst themselves, or to pay or contribute to the Payment of the Costs, Charges, and Expenses of winding up the Company, and every such Contributory shall be liable to contribute to the Assets of the Company in the course of the winding up all Sums due from him in respect of any such Liability as aforesaid; but in the event of the Death, Bankruptcy, or Insolvency of any Contributory, or Marriage of any Female Contributory, the Provisions herein-before contained with respect to the Personal Representatives, Heirs and Devisees of a deceased Contributory, and to the Assignees of a bankrupt or insolvent Contributory, and to the Husband of married Contributories, shall apply.

Power of Court to restrain further Proceedings.

CCI. The Court may, at any Time after the Presentation of a Petition for winding up an unregistered Company, and before making an Order for winding up the Company, upon the Application of any Creditor of the Company, restrain further Proceedings in any Action, Suit, or Proceeding against any Contributory of the Company, or against the Company as herein-before provided, upon such Terms as the Court thinks fit.

Effect of Order for winding up Company.

CCII. Where an Order has been made for winding up an unregistered Company in addition to the Provisions herein-before contained in the Case of Companies formed under this Act, it is hereby further provided that no Suit, Action, or other legal Proceeding shall be commenced or proceeded with against any Contributory of the Company in respect of any Debt of the Company, except with the Leave of the Court, and subject to such Terms as the Court may impose.

Provision in case of unregistered Company.

CCIII. If any unregistered Company has no Power to sue and be sued in a common Name, or if for any reason it appears expedient, the Court may by the Order made for winding up

such Company, or by any subsequent Order, direct that all such Property, Real and Personal, including all Interest, Claims, and Rights into and out of Property, Real and Personal, and including Things in Action, as may belong to or be vested in the Company, or to or in any Person or Persons on Trust for or on behalf of the Company, or any Part of such Property, is to vest in the Official Liquidator or Official Liquidators by his or their official Name or Names, and thereupon the same or such Part thereof as may be specified in the Order shall vest accordingly, and the Official Liquidator or Official Liquidators may, in his or their official Name or Names, or in such Name or Names and after giving such Indemnity as the Court directs, bring or defend any Actions, Suits, or other legal Proceeding relating to any Property vested in him or them, or any Actions, Suits, or other legal Proceedings necessary to be brought or defended for the Purposes of effectually winding up the Company and recovering the Property thereof.

Provisions in this Part of Act cumulative.

CCIV. The Provisions made by this Part of the Act with respect to unregistered Companies shall be deemed to be made in addition to and not in restriction of any Provisions hereinbefore contained with respect to winding up Companies by the Court, and the Court or Official Liquidator may, in addition to anything contained in this Part of the Act, exercise any Powers or do any Act in the case of unregistered Companies which might be exercised or done by it or him in winding up Companies formed under this Act; but an unregistered Company shall not, except in the event of its being wound up, be deemed to be a Company under this Act, and then only to the Extent provided by this Part of this Act.

PART IX.

Repeal of Acts, and temporary Provisions.

Repeal of Acts.

CCV. After the Commencement of this Act there shall be repealed the several Acts specified in the First Part of the Third Schedule hereto, with this Qualification, that so much of the said Acts as is set forth in the Second Part of the said Third Schedule shall be hereby re-enacted and continue in force as if unrepealed.

Saving Clause as to Repeal.

CCVI. No Repeal hereby enacted shall affect,

(1.) Anything duly done under any Acts hereby repealed:

(2.) The Incorporation of any Company registered under any Act hereby repealed:

(3.) Any Right or Privilege acquired or Liability incurred under any Act hereby repealed:

(4.) Any Penalty, Forfeiture, or other Punishment incurred

in respect of any Offence against any Act hereby repealed:

(5.) Table B. in the Schedule annexed to the Joint Stock Companies Act, 1856, or any Part thereof, so far as the same applies to any Company existing at the Time of the Commencement of this Act.

Saving of existing Proceedings for winding up.

CCVII. Where previously to the Commencement of this Act an Order has been made for winding up a Company under any Acts or Act hereby repealed, or a Resolution has been passed for winding up a Company voluntarily, such Company shall be wound up in the same manner and with the same Incidents as if this Act were not passed, and for the Purposes of such winding up such repealed Acts or Act shall be deemed to remain in full Force.

Saving of Conveyance Deeds.

CCVIII. Where previously to the Commencement of this Act any Conveyance, Mortgage, or other Deed has been made in pursuance of any Act hereby repealed, such Deed shall be of the same Force as if this Act had not passed, and for the Purposes of such Deed such repealed Act shall be deemed to remain in full Force.

Compulsory Registration of Certain Companies.

CCIX. Every Insurance Company completely registered under the Act passed in the Eighth Year of the reign of Her present Majesty, Chapter One hundred and ten, intituled *An Act for the Registration, Incorporation, and Regulation of Joint Stock Companies*, shall, on or before the Second Day of *November* One thousand eight hundred and sixty-two, and every other Company required by any Act hereby repealed to register under the said Joint Stock Companies Acts, or One of such Acts, and which has not so registered, shall, on or before the Expiration of the Thirty-first Day from the Commencement of this Act, register itself as a Company under this Act, in manner and subject to the Regulations herein-before contained, with this Exception, that no Company completely registered under the said Act of the Eighth Year of the reign of Her present Majesty shall be required to deliver to the Registrar a Copy of its Deed of Settlement; and for the Purpose of enabling such Insurance Companies as are mentioned in this Section to register under this Act, this Act shall be deemed to come into operation immediately on the passing thereof; nevertheless the Registration of such Companies shall not have any Effect until the Time of the Commencement of this Act. No Fees shall be charged in respect of the Registration of any Company required to register by this Section.

Penalty on Company not registering.

CCX. If any Company required by the last Section to register under this Act makes default in complying with the Provisions thereof, then, from and after the Day upon which such Company is required to register under this Act, until

21 Vict. c. 14. s. 28.

the Day on which such Company is registered under this Act (which it is empowered to do at any Time), the following Consequences shall ensue; (that is to say,)

(1.) The Company shall be incapable of suing either at Law or in Equity, but shall not be incapable of being made a Defendant to a Suit either at Law or in Equity:

(2.) No Dividend shall be payable to any Shareholder in such Company:

(3.) Each Director or Manager of the Company shall for each Day during which the Company so being in default carries on Business incur a Penalty not exceeding Five Pounds, and such Penalty may be recovered by any Person, whether a Shareholder or not in the Company, and be applied by him to his own Use:

Nevertheless, such Default shall not render the Company so being in default illegal, nor subject it to any Penalty or Disability, other than as specified in this Section; and Registration under this Act shall cancel any Penalty or Forfeiture, and put an end to any Disability which any Company may have incurred under any Act hereby repealed by reason of its not having registered under the said Joint Stock Companies Acts, 1856, 1857, or One of them.

Temporary Power for Companies to change registered Office.

CCXI. Upon the Application of the Directors of any Company registered under the Joint Stock Companies Acts as herein-before defined, or any of them, made within One Year after the Date of the Commencement of this Act, sanctioned by a Resolution passed at an Extraordinary General Meeting, but subject to the Restrictions herein-after mentioned, the Board of Trade shall have Authority by their Certificate in Writing to change the registered Office of any such Company from any one Part of the United Kingdom of *Great Britain* and *Ireland* to any other Part thereof, and the Registrar of Joint Stock Companies with whom the Memorandum of Registration of such Company has been registered shall, upon Receipt of such Certificate, note in Writing upon the Margin or at the Foot of the said Memorandum the Name of the Place to which such registered Office is to be transferred, and the Day upon which such Transfer is pursuant to such Certificate to take place, and shall attach the Certificate to the Memorandum, and the said Registrar shall thereupon transmit to the Registrar of Joint Stock Companies for that Part of the United Kingdom to which the registered Office is to be so transferred Copies of the said Certificate and of the said Memorandum of Registration so noted certified by him; and the said Registrar for the said last-mentioned Part of the United Kingdom shall, upon Receipt of such Copies of Certificate and Memorandum, retain and register the same in like Manner, and on Payment of the like Fees to

him as provided in the Case of the Registration of an original Memorandum of Registration, and thereupon the Place of the registered Office shall, from the said last-mentioned Registration and the said Day mentioned in the said Certificate, be the Place mentioned as such on the said Certificate: Provided, however, that such Change shall in nowise alter or affect anything theretofore done by the said Company, or any of their Rights or Liabilities in respect thereof.

Restrictions on Issue of Certificate.

CCXII. The Board of Trade shall not issue their Certificate in pursuance of the foregoing Section until they are satisfied that an Advertisement of the Intention of the Company to apply to the Board of Trade for a Certificate, with a Declaration that all Parties objecting thereto are forthwith to apply to the Board of Trade, has been published once at the least in each of Four successive Weeks in the Newspapers following; that is to say, in some Newspaper circulating in the District where the registered Office of the Company is situate, and also if the Company is registered in *England* in the *London Gazette*, if in *Ireland* in the *Dublin Gazette*, if in *Scotland* in the *Edinburgh Gazette*, nor until the said Board are satisfied that the Objections, if any, that may be urged against the Issue of such Certificate are groundless.

FIRST SCHEDULE.

TABLE A.

REGULATIONS for MANAGEMENT of a COMPANY LIMITED by SHARES.

Shares.

(1.) If several Persons are registered as joint Holders of any Share, any One of such Persons may give effectual Receipts for any Dividend payable in respect of such Share.

(2.) Every Member shall, on Payment of One Shilling, or such less Sum as the Company in General Meeting may prescribe, be entitled to a Certificate, under the Common Seal of the Company, specifying the Share or Shares held by him, and the Amount paid up thereon.

(3.) If such Certificate is worn out or lost, it may be renewed, on Payment of One Shilling, or such less Sum as the Company in General Meeting may prescribe.

Calls on Shares.

(4.) The Directors may from Time to Time make such Calls upon the Members in respect of all Monies unpaid on their Shares as they think fit, provided that Twenty-one Days

Notice at least is given of each Call, and each Member shall be liable to pay the Amount of Calls so made to the Persons and at the Times and Places appointed by the Directors.

(5.) A Call shall be deemed to have been made at the Time when the Resolution of the Directors authorizing such Call was passed.

(6.) If the Call payable in respect of any Share is not paid before or on the Day appointed for Payment thereof, the Holder for the Time being of such Share shall be liable to pay Interest for the same at the Rate of Five Pounds per Cent. per Annum from the Day appointed for the Payment thereof to the Time of the actual Payment.

(7.) The Directors may, if they think fit, receive from any Member willing to advance the same all or any Part of the Monies due upon the Shares held by him beyond the Sums actually called for; and upon the Monies so paid in advance, or so much thereof as from Time to Time exceeds the Amount of the Calls then made upon the Shares in respect of which such Advance has been made, the Company may pay Interest at such Rate as the Member paying such Sum in advance and the Directors agree upon.

Transfers of Shares.

(8.) The Instrument of Transfer of any Share in the Company shall be executed both by the Transferor and Transferee, and the Transferor shall be deemed to remain a Holder of such Share until the Name of the Transferee is entered in the Register Book in respect thereof.

(9.) Shares in the Company shall be transferred in the following Form:—

I *A.B.* of in Consideration of the Sum of Pounds paid to me by *C.D.* of do hereby transfer to the said *C.D.* the Share [*or* Shares] numbered standing in my Name in the Books of the Company, to hold unto the said *C.D.*, his Executors, Administrators, and Assigns, subject to the Several Conditions on which I held the same at the Time of the Execution hereof; and I the said *C.D.* do hereby agree to take the said Share [*or* Shares] subject to the same Conditions. As witness our Hands, the Day of .

(10.) The Company may decline to register any Transfer of Shares made by a member who is indebted to them.

(11.) The Transfer Books shall be closed during the Fourteen Days immediately preceding the Ordinary General Meeting in each Year.

Transmission of Shares.

(12.) The Executors or Administrators of a deceased Member shall be the only Persons recognised by the Company as having any Title to his Share.

(13.) Any Person becoming entitled to a Share in consequence of the Death, Bankruptcy, or Insolvency of any Member, or in consequence of the Marriage of any Female Member, may be registered as a Member upon such Evidence being produced as may from Time to Time be required by the Company.

(14.) Any Person who has become entitled to a Share in consequence of the Death, Bankruptcy, or Insolvency of any Member, or in consequence of the Marriage of any Female Member, may, instead of being registered himself, elect to have some Person to be named by him registered as a Transferee of such Share.

(15.) The Person so becoming entitled shall testify such Election by executing to his Nominee an Instrument of Transfer of such Share.

(16.) The Instrument of Transfer shall be presented to the Company, accompanied with such Evidence as the Directors may require to prove the Title of the Transferor, and thereupon the Company shall register the Transferee as a Member.

Forfeiture of Shares.

(17.) If any Member fails to pay any Call on the Day appointed for Payment thereof, the Directors may, at any Time thereafter during such Time as the Call remains unpaid, serve a Notice on him, requiring him to pay such Call, together with Interest and any Expenses that may have accrued by reason of such Nonpayment.

(18.) The Notice shall name a further Day, on or before which such Call, and all Interest and Expenses that have accrued by reason of such Nonpayment, are to be paid. It shall also name the Place where Payment is to be made (the Place so named being either the registered Office of the Company or some other Place at which Calls of the Company are usually made payable). The Notice shall also state that in the event of Nonpayment at or before the Time and at the place appointed the Shares in respect of which such Call was made will be liable to be forfeited.

(19.) If the Requisitions of any such Notice as aforesaid are not complied with, any Share in respect of which such Notice has been given may at any Time thereafter, before Payment of all Calls, Interest, and Expenses due in respect

thereof has been made, be forfeited, by a Resolution of the Directors to that Effect.

(20.) Any Share so forfeited shall be deemed to be the Property of the Company, and may be disposed of in such Manner as the Company in General Meeting thinks fit.

(21.) Any Member whose Shares have been forfeited shall notwithstanding be liable to pay to the Company all Calls owing upon such Shares at the Time of the Forfeiture.

(22.) A statutory Declaration in Writing, that the Call in respect of a Share was made and Notice thereof given, and that Default in Payment of the Call was made, and that the Forfeiture of the Share was made by a Resolution of the Directors to that Effect, shall be sufficient Evidence of the Facts therein stated, as against all Persons entitled to such Share, and such Declaration and the Receipt of the Company for the Price of such Share shall constitute a good Title to such Share, and a Certificate of Proprietorship shall be delivered to a Purchaser, and thereupon he shall be deemed the Holder of such Share discharged from all Calls due prior to such Purchase, and he shall not be bound to see to the Application of the Purchase Money, nor shall his Title to such Share be affected by any Irregularity in the Proceedings in reference to such Sale.

Conversion of Shares into Stock.

(23.) The Directors may, with the Sanction of the Company previously given in General Meeting, convert any paid up Shares into Stock.

(24.) When any Shares have been converted into Stock, the several Holders of such Stock may thenceforth transfer their respective Interests therein, or any Part of such Interests, in the same Manner and subject to the same Regulations as and subject to which any Shares in the Capital of the Company may be transferred, or as near thereto as Circumstances admit.

(25.) The several Holders of Stock shall be entitled to participate in the Dividends and Profits of the Company according to the Amount of their respective Interests in such Stock; and such Interests shall, in proportion to the Amount thereof, confer on the Holders thereof respectively the same Privileges and Advantages for the Purpose of voting at Meetings of the Company, and for other Purposes, as would have been conferred by Shares of equal Amount in the Capital of the Company; but so that none of such Privileges or Advantages, except the Participation in the Dividends and Profits of the Company, shall be conferred by any such aliquot Part of Consolidated Stock as

would not, if existing in Shares, have conferred such Privileges or Advantages.

Increase in Capital.

(26.) The Directors may, with the Sanction of a special Resolution of the Company previously given in General Meeting, increase its Capital by the Issue of new Shares, such aggregate Increase to be of such Amount, and to be divided into Shares of such respective Amounts, as the Company in General Meeting directs, or, if no Direction is given, as the Directors think expedient.

(27.) Subject to any Direction to the contrary that may be given by the Meeting that sanctions the Increase of Capital, all new Shares shall be offered to the Members in proportion to the existing Shares held by them, and such Offer shall be made by Notice specifying the Number of Shares to which the Member is entitled, and limiting a Time within which the Offer, if not accepted, will be deemed to be declined, and after the Expiration of such Time, or on the Receipt of an Intimation from the Member to whom such Notice is given that he declines to accept the Shares offered, the Directors may dispose of the same in such Manner as they think most beneficial to the Company.

(28.) Any Capital raised by the Creation of new Shares shall be considered as Part of the original Capital, and shall be subject to the same Provisions with reference to the Payment of Calls, and the Forfeiture of Shares on Nonpayment of Calls, or otherwise, as if it had been Part of the original Capital.

General Meetings.

(29.) The First General Meeting shall be held at such Time, not being more than Six Months after the Registration of the Company, and at such Place, as the Directors may determine.

(30.) Subsequent General Meetings shall be held at such Time and Place as may be prescribed by the Company in General Meeting; and if no other Time or Place is prescribed, a General Meeting shall be held on the First Monday in February in every Year, at such Place as may be determined by the Directors.

(31.) The above-mentioned General Meetings shall be called Ordinary Meetings; all other General Meetings shall be called Extraordinary.

(32.) The Directors may, whenever they think fit, and they shall upon a Requisition made in Writing by not less than One Fifth in Number of the Members of the Company, convene an Extraordinary General Meeting.

(33.) Any Requisition made by the Members shall express the Object of the Meeting proposed to be called, and shall be left at the registered Office of the Company.

(34.) Upon the Receipt of such Requisition the Directors shall forthwith proceed to convene an Extraordinary General Meeting. If they do not proceed to convene the same within Twenty-one Days from the Date of the Requisition, the Requisitionists, or any other Members amounting to the required Number, may themselves convene an Extraordinary General Meeting.

Proceedings at General Meetings.

(35.) Seven Days Notice at the least, specifying the Place, the Day, and the Hour of Meeting, and in case of special Business the general Nature of such Business, shall be given to the Members in manner herein-after mentioned, or in such other Manner, if any, as may be prescribed by the Company in General Meeting; but the Non-receipt of such Notice by any Member shall not invalidate the Proceedings at any General Meeting.

(36.) All Business shall be deemed special that is transacted at an Extraordinary Meeting, and all that is transacted at an Ordinary Meeting, with the Exception of sanctioning a Dividend and the Consideration of the Accounts, Balance Sheets, and the Ordinary Report of the Directors.

(37.) No Business shall be transacted at any General Meeting, except the Declaration of a Dividend, unless a Quorum of Members is present at the Time when the Meeting proceeds to Business; and such Quorum shall be ascertained as follows; that is to say, if the Persons who have taken Shares in the Company at the Time of the Meeting do not exceed Ten in Number, the Quorum shall be Five; if they exceed Ten there shall be added to the above Quorum One for every Five additional Members up to Fifty, and One for every Ten additional Members after Fifty, with this Limitation, that no Quorum shall in any Case exceed Twenty.

(38.) If within One Hour from the Time appointed for the Meeting a Quorum is not present, the Meeting, if convened upon the Requisition of Members, shall be dissolved: In any other Case it shall stand adjourned to the same Day in the next Week, at the same Time and Place; and if at such adjourned Meeting a Quorum is not present, it shall be adjourned sine die.

(39.) The Chairman (if any) of the Board of Directors shall preside as Chairman at every General Meeting of the Company.

(40.) If there is no such Chairman, or if at any Meeting he is not present within Fifteen Minutes after the Time appoint-

ed for holding the Meeting, the Members present shall choose some One of their Number to be Chairman.

(41.) The Chairman may, with the Consent of the Meeting, adjourn any Meeting from Time to Time and from Place to Place, but no Business shall be transacted at any adjourned Meeting other than the Business left unfinished at the Meeting from which the Adjournment took place.

(42.) At any General Meeting, unless a Poll is demanded by at least Five Members, a Declaration by the Chairman that a Resolution has been carried, and an Entry to that Effect in the Book of Proceedings of the Company, shall be sufficient Evidence of the Fact, without Proof of the Number or Proportion of the Votes recorded in favour of or against such Resolution.

(43.) If a Poll is demanded by Five or more Members it shall be taken in such Manner as the Chairman directs, and the Result of such Poll shall be deemed to be the Resolution of the Company in General Meeting. In the Case of an Equality of Votes at any General Meeting the Chairman shall be entitled to a Second or Casting Vote.

Votes of Members.

(44.) Every Member shall have One Vote for every Share up to Ten: He shall have an additional Vote for every Five Shares beyond the First Ten Shares up to One hundred, and an additional Vote for every Ten Shares beyond the first Hundred Shares.

(45.) If any Member is a Lunatic or Idiot he may vote by his Committee, Curator bonis, or other legal Curator.

(46.) If One or more Persons are jointly entitled to a Share or Shares, the Member whose Name stands first in the Register of Members as One of the Holders of such Share or Shares, and no other, shall be entitled to vote in respect of the same.

(47.) No Member shall be entitled to vote at any General Meeting unless all Calls due from him have been paid, and no Member shall be entitled to vote in respect of any Share that he has acquired by Transfer at any Meeting held after the Expiration of Three Months from the Registration of the Company, unless he has been possessed of the Share in respect of which he claims to vote for at least Three Months previously to the Time of holding the Meeting at which he proposes to vote.

(48.) Votes may be given either personally or by Proxy.

(49.) The Instrument appointing a Proxy shall be in Writing, under the Hand of the Appointor, or if such Appointor is a Corporation, under their Common Seal, and shall be attested

by One or more Witness or Witnesses: No person shall be appointed a Proxy who is not a Member of the Company.

(50.) The Instrument appointing a Proxy shall be deposited at the registered Office of the Company not less than Seventy-two Hours before the Time for holding the Meeting at which the Person named in such Instrument proposes to vote, but no Instrument appointing a Proxy shall be valid after the Expiration of Twelve Months from the Date of its Execution.

(51.) Any Instrument appointing a Proxy shall be in the following Form:—

Company Limited.

I of in the County of being a Member of the Company Limited, and entitled to Vote *or* Votes, hereby appoint of as my Proxy, to vote for me and on my Behalf at the [Ordinary *or* Extraordinary, *as the Case may be*] General Meeting of the Company to be held on the Day of , and at any Adjournment thereof [*or*, at any Meeting of the Company that may be held in the Year].

As witness my Hand, this Day of .

Signed by the said in the Presence of .

Directors.

(52.) The Number of the Directors, and the Names of the First Directors, shall be determined by the Subscribers of the Memorandum of Association.

(53.) Until Directors are appointed the Subscribers of the Memorandum of Association shall be deemed to be Directors.

(54.) The future Remuneration of the Directors, and their Remuneration for Services performed previously to the First General Meeting, shall be determined by the Company in General Meeting.

Powers of Directors.

(55.) The Business of the Company shall be managed by the Directors, who may pay all Expenses incurred in getting up and registering the Company, and may exercise all such Powers of the Company as are not by the foregoing Act, or by these Articles, required to be exercised by the Company in General Meeting, subject nevertheless to any Regulations of these Articles, to the Provisions of the foregoing Act, and to such Regulations, being not inconsistent with the aforesaid Regulations or Provisions, as may be prescribed by the Company in General Meeting; but no Regulation made by the Company in General Meeting shall

invalidate any prior Act of the Directors which would have been valid if such Regulation had not been made.

(56.) The continuing Directors may act notwithstanding any Vacancy in their Body.

Disqualification of Directors.

(57.) The Office of Director shall be vacated,—

If he holds any other Office or Place of Profit under the Company:

If he becomes bankrupt or insolvent:

If he is concerned in or participates in the Profits of any Contract with the Company:

But the above Rules shall be subject to the following Exceptions: That no Director shall vacate his Office by reason of his being a Member of any Company which has entered into Contracts with or done any Work for the Company of which he is Director; nevertheless he shall not vote in respect of such Contract or Work; and if he does so vote his Vote shall not be counted.

Rotation of Directors.

(58.) At the First Ordinary Meeting after the Registration of the Company the whole of the Directors shall retire from Office; and at the First Ordinary Meeting in every subsequent Year One Third of the Directors for the Time being, or if their Number is not a Multiple of Three, then the Number nearest to One Third, shall retire from Office.

(59.) The One Third or other nearest Number to retire during the First and Second Years ensuing the First Ordinary Meeting of the Company shall, unless the Directors agree among themselves, be determined by Ballot: In every subsequent Year the One Third or other nearest Number who have been longest in Office shall retire.

(60.) A retiring Director shall be re-eligible.

(61.) The Company at the General Meeting at which any Directors retire in manner aforesaid shall fill up the vacated Offices by electing a like Number of Persons.

(62.) If at any Meeting at which an Election of Directors ought to take place the Places of the vacating Directors are not filled up, the Meeting shall stand adjourned till the same Day in the next Week, at the same Time and Place; and if at such adjourned Meeting the Places of the vacating Directors are not filled up, the vacating Directors, or such of them as have not had their Places filled up, shall continue in Office until the Ordinary Meeting in the next Year, and so on from Time to Time until their Places are filled up.

(63.) The Company may from Time to Time, in General Meeting, increase or reduce the Number of Directors, and may also determine in what Rotation such increased or reduced Number is to go out of Office.

(64.) Any casual Vacancy occurring in the Board of Directors may be filled up by the Directors, but any Person so chosen shall retain his Office so long only as the vacating Director would have retained the same if no Vacancy had occurred.

(65.) The Company, in General Meeting, may, by a special Resolution, remove any Director before the Expiration of his Period of Office, and may by an ordinary Resolution appoint another Person in his Stead: The Person so appointed shall hold Office during such Time only as the Director in whose Place he is appointed would have held the same if he had not been removed.

Proceedings of Directors.

(66.) The Directors may meet together for the Despatch of Business, adjourn, and otherwise regulate their Meetings as they think fit, and determine the Quorum necessary for the Transaction of Business: Questions arising at any Meeting shall be decided by a Majority of Votes: In case of an Equality of Votes the Chairman shall have a Second or Casting Vote: A Director may at any Time summon a Meeting of the Directors.

(67.) The Directors may elect a Chairman of their Meetings, and determine the Period for which he is to hold Office; but if no such Chairman is elected, or if at any Meeting the Chairman is not present at the Time appointed for holding the same, the Directors present shall choose some One of their Number to be Chairman of such Meeting.

(68.) The Directors may delegate any of their Powers to Committees consisting of such Member or Members of their Body as they think fit: Any Committee so formed shall, in the Exercise of the Powers so delegated, conform to any Regulations that may be imposed on them by the Directors.

(69.) A Committee may elect a Chairman of their Meetings: If no such Chairman is elected, or if he is not present at the Time appointed for holding the same, the Members present shall choose One of their Number to be Chairman of such Meeting.

(70.) A Committee may meet and adjourn as they think proper: Questions arising at any Meeting shall be determined by a Majority of Votes of the Members present; and in case of an Equality of Votes the Chairman shall have a Second or Casting Vote.

(71.) All Acts done by any Meeting of the Directors, or of a

Committee of Directors, or by any Person acting as a Director, shall, notwithstanding that it be afterwards discovered that there was some Defect in the Appointment of any such Directors or Persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such Person had been duly appointed and was qualified to be a Director.

Dividends.

(72.) The Directors may, with the Sanction of the Company in General Meeting, declare a Dividend to be paid to the Members in proportion to their Shares.

(73.) No Dividend shall be payable except out of the Profits arising from the Business of the Company.

(74.) The Directors may, before recommending any Dividend, set aside out of the Profits of the Company such Sum as they think proper as a reserved Fund to meet Contingencies, or for equalising Dividends, or for repairing or maintaining the Works connected with the Business of the Company, or any Part thereof; and the Directors may invest the Sum so set apart as a reserved Fund upon such Securities as they may select.

(75.) The Directors may deduct from the Dividends payable to any Member all such Sums of Money as may be due from him to the Company on account of Calls or otherwise.

(76.) Notice of any Dividend that may have been declared shall be given to each Member in manner herein-after mentioned; and all Dividends unclaimed for Three Years, after having been declared, may be forfeited by the Directors for the Benefit of the Company.

(77.) No Dividend shall bear Interest as against the Company.

Accounts.

(78.) The Directors shall cause true Accounts to be kept,—

Of the Stock in Trade of the Company;

Of the Sums of Money received and expended by the Company, and the Matter in respect of which such Receipt and Expenditure takes place; and,

Of the Credits and Liabilities of the Company:

The Books of Account shall be kept at the registered Office of the Company, and, subject to any reasonable Restrictions as to the Time and Manner of inspecting the same that may be imposed by the Company in General Meeting, shall be open to the Inspection of the Members during the Hours of Business.

(79.) Once at the least in every Year the Directors shall lay before the Company in General Meeting a Statement of

the Income and Expenditure for the past Year, made up to a Date not more than Three Months before such Meeting.

(80.) The Statement so made shall show, arranged under the most convenient Heads, the Amount of gross Income, distinguishing the several Sources from which it has been derived, and the Amount of gross Expenditure, distinguishing the Expense of the Establishment, Salaries, and other like Matters: Every Item of Expenditure fairly chargeable against the Year's Income shall be brought into Account, so that a just Balance of Profit and Loss may be laid before the Meeting; and in Cases where any Item of Expenditure which may in Fairness be distributed over several Years has been incurred in any One Year the whole Amount of such Item shall be stated, with the Addition of the Reasons why only a Portion of such Expenditure is charged against the Income of the Year.

(81.) A Balance Sheet shall be made out in every Year, and laid before the Company in General Meeting, and such Balance Sheet shall contain a Summary of the Property and Liabilities of the Company arranged under the Heads appearing in the Form annexed to this Table, or as near thereto as Circumstances admit.

(82.) A printed Copy of such Balance Sheet shall, Seven Days previously to such Meeting, be served on every Member in the Manner in which Notices are herein-after directed to be served.

Audit.

(83.) Once at the least in every Year the Accounts of the Company shall be examined, and the Correctness of the Balance Sheet ascertained, by One or more Auditor or Auditors.

(84.) The First Auditors shall be appointed by the Directors: Subsequent Auditors shall be appointed by the Company in General Meeting.

(85.) If One Auditor only is appointed, all the Provisions herein contained relating to Auditors shall apply to him.

(86.) The Auditors may be Members of the Company; but no Person is eligible as an Auditor who is interested otherwise than as a Member in any Transaction of the Company; and no Director or other Officer of the Company is eligible during his Continuance in Office.

(87.) The Election of Auditors shall be made by the Company at their Ordinary Meeting in each Year.

(88.) The Remuneration of the First Auditors shall be fixed by the Directors; that of subsequent Auditors shall be fixed by the Company in General Meeting.

(89.) Any Auditor shall be re-eligible on his quitting Office.

(90.) If any casual Vacancy occurs in the Office of any Auditor

appointed by the Company, the Directors shall forthwith call an Extraordinary General Meeting for the Purpose of supplying the same.

(91.) If no Election of Auditors is made in manner aforesaid the Board of Trade may, on the Application of not less than Five Members of the Company, appoint an Auditor for the current Year, and fix the Remuneration to be paid to him by the Company for his Services.

(92.) Every Auditor shall be supplied with a Copy of the Balance Sheet, and it shall be his Duty to examine the same, with the Accounts and Vouchers relating thereto.

(93.) Every Auditor shall have a List delivered to him of all Books kept by the Company, and shall at all reasonable Times have Access to the Books and Accounts of the Company: He may, at the Expense of the Company, employ Accountants or other Persons to assist him in investigating such Accounts, and he may in relation to such Accounts examine the Directors or any other Officer of the Company.

(94.) The Auditors shall make a Report to the Members upon the Balance Sheet and Accounts, and in every such Report they shall state whether, in their Opinion, the Balance Sheet is a full and fair Balance Sheet, containing the Particulars required by these Regulations, and properly drawn up so as to exhibit a true and correct View of the State of the Company's Affairs, and in case they have called for Explanations or Information from the Directors, whether such Explanations or Information have been given by the Directors, and whether they have been satisfactory; and such Report shall be read, together with the Report of the Directors, at the Ordinary Meeting.

Notices.

(95.) A Notice may be served by the Company upon any Member either personally, or by sending it through the Post in a prepaid Letter addressed to such Member at his registered Place of Abode.

(96.) All Notices directed to be given to the Members shall, with respect to any Share to which Persons are jointly entitled, be given to whichever of such Persons is named first in the Register of Members; and Notice so given shall be sufficient Notice to all the Holders of such Share.

(97.) Any Notice, if served by Post, shall be deemed to have been served at the Time when the Letter containing the same would be delivered in the ordinary Course of the Post; and in proving such Service it shall be sufficient to prove that the Letter containing the Notices was properly addressed and put into the Post Office.

Dr. BALANCE SHEET of the Co. made up to 18 . Cr.

CAPITAL AND LIABILITIES.			£ s. d.	£ s. d.
		Showing:		
I. CAPITAL.	1.	*The Number of Shares* . . .		
	2.	*The Amount paid per Share* . .		
	3.	*If any Arrears of Calls, the Nature of the Arrear, and the Names of the Defaulters.*		
	4.	*The Particulars of any forfeited Shares.*		
		Showing:		
II. DEBTS AND LIABILITIES of the Company.	5.	*The Amount of Loans on Mortgages or Debenture Bonds.*		
	6.	*The Amount of Debts owing by the Company, distinguishing—*		
		(a.) *Debts for which Acceptances have been given.*		
		(b.) *Debts to Tradesmen for Supplies of Stock in Trade or other Articles.*		
		(c.) *Debts for Law Expenses.*		
		(d.) *Debts for Interest on Debentures or other Loans.*		
		(e.) *Unclaimed Dividends.*		
		(f.) *Debts not enumerated above.*		
VI. RESERVE FUND.		*Showing:* *The Amount set aside from Profits to meet Contingencies.*		
VII. PROFIT AND LOSS.		*Showing:* *The disposable Balance for payment of Dividend, &c.*		
CONTINGENT LIABILITIES.		*Claims against the Company not acknowledged as Debts.* *Monies for which the Company is contingently liable.*		

PROPERTY AND ASSETS.			£ s. d.	£ s. d.
		Showing:		
III. PROPERTY held by the Company.	7.	*Immovable Property, distinguishing*		
		(a.) *Freehold Land* . . .		
		(b.) ,, *Buildings* . .		
		(c.) *Leasehold* ,, . .		
	8.	*Movable Property, distinguishing*		
		(d.) *Stock in Trade* . . .		
		(e.) *Plant*		
		The Cost to be stated with Deductions for Deterioration in Value as charged to the Reserve Fund or Profit and Loss.		
		Showing:		
IV. DEBTS owing to the Company.	9.	*Debts considered good for which the Company hold Bills or other Securities.*		
	10.	*Debts considered good for which the Company hold no Security.*		
	11.	*Debts considered doubtful and bad* . *Any Debt due from a Director or other Officer of the Company to be separately stated.*		
		Showing:		
V. CASH AND INVESTMENTS.	12.	*The Nature of Investment and Rate of Interest.*		
	13.	*The Amount of Cash, where lodged, and if bearing Interest.*		

TABLE B.

TABLE OF FEES to be paid to the REGISTRAR of JOINT STOCK COMPANIES by a Company having a Capital divided into Shares.

	£	s.	d.
For Registration of a Company whose nominal Capital does not exceed 2,000*l.*, a Fee of . .	2	0	0
For Registration of a Company whose nominal Capital exceeds 2,000*l.*, the above Fee of 2*l.*, with the following additional Fees, regulated according to the Amount of nominal Capital; (that is to say,)			
For every 1,000*l.* of nominal Capital, or Part of 1,000*l.*, after the first 2,000*l.*, up to 5,000*l.* . .	1	0	0
For every 1,000*l.* of nominal Capital, or Part of 1,000*l.*, after the first 5,000*l.*, up to 100,000*l.* . .	0	5	0
For every 1,000*l.* of nominal Capital, or Part of 1,000*l.*, after the first 100,000*l.* . . .	0	1	0
For Registration of any Increase of Capital made after the First Registration of the Company, the same Fees per 1,000*l.*, or Part of 1,000*l.*, as would have been payable if such increased Capital had formed Part of the original Capital at the Time of Registration.			
Provided that no Company shall be liable to pay in respect of nominal Capital on Registration, or afterwards, any greater Amount of Fees than 50*l.*, taking into account in the Case of Fees payable on an Increase of Capital after Registration the Fees paid on Registration.			
For Registration of any existing Company, except such Companies as are by this Act exempted from Payment of Fees in respect of Registration under this Act, the same Fee as is charged for registering a new Company.			
For registering any Document hereby required or authorized to be registered, other than the Memorandum of Association	0	5	0
For making a Record of any Fact hereby authorized or required to be recorded by the Registrar of Companies, a Fee of	0	5	0

TABLE C.

TABLE OF FEES to be paid to the REGISTRAR of JOINT STOCK COMPANIES by a Company not having a Capital divided into Shares.

	£	s.	d.
For Registration of a Company whose Number of Members as stated in the Articles of Association does not exceed 20	2	0	0
For Registration of a Company whose Number of Members, as stated in the Articles of Association, exceeds 20, but does not exceed 100 . .	5	0	0
For Registration of a Company whose Number of Members, as stated in the Articles of Association, exceeds 100, but is not stated to be unlimited, the above Fee of 5*l.*, with an additional 5*s.* for every 50 Members or less Number than 50 Members after the first 100.			
For Registration of a Company in which the Number of Members is stated in the Articles of Association to be unlimited, a Fee of	20	0	0
For Registration of any Increase on the Number of Members made after the Registration of the Company in respect of every 50 Members, or less than 50 Members, of such Increase . . .	0	5	0
Provided that no One Company shall be liable to pay on the whole a greater Fee than 20*l.* in respect of its Number of Members, taking into account the Fee paid on the First Registration of the Company.			
For Registration of any existing Company, except such Companies as are by this Act exempted from Payment of Fees in respect of Registration under this Act, the same Fee as is charged for registering a new Company.			
For registering any Document hereby required or authorized to be registered, other than the Memorandum of Association	0	5	0
For making a Record of any Fact hereby authorized or required to be recorded by the Registrar of Companies, a Fee of	0	5	0

FORM D.

FORM OF STATEMENT referred to in Part III. of the Act.

* The Capital of the Company is , divided into Shares of each.

The Number of Shares issued is .

Calls to the Amount of Pounds per Share have been made, under which the Sum of Pounds has been received.

The Liabilities of the Company on the First Day of January (*or* July) were,—

Debts owing to Sundry Persons by the Company:

On Judgment, £

On Specialty, £

On Notes or Bills, £

On Simple Contracts, £

On estimated Liabilities, £

The Assets of the Company on that Day were,—

Government Securities [*stating them*], £

Bills of Exchange and Promissory Notes, £

Cash at the Bankers, £

Other Securities, £

SECOND SCHEDULE.

FORM A.

MEMORANDUM of ASSOCIATION of a Company limited by Shares.

1st. The Name of the Company is "The Eastern Steam Packet "Company, Limited."

2d. The registered Office of the Company will be situate in England.

3d. The Objects for which the Company is established are, "the Conveyance of Passengers and Goods in Ships or Boats "between such Places as the Company may from Time to Time "determine, and the doing all such other Things as are inci- "dental or conducive to the Attainment of the above Object."

4th. The Liability of the Members is limited.

5th. The Capital of the Company is Two hundred thousand Pounds, divided into One thousand Shares of Two hundred Pounds each.

* If the Company has no Capital divided into Shares the Portion of the Statement relating to Capital and Shares must be omitted.

We, the several Persons whose Names and Addresses are subscribed, are desirous of being formed into a Company, in pursuance of this Memorandum of Association, and we respectively agree to take the Number of Shares in the Capital of the Company set opposite our respective Names.

Names, Addresses, and Descriptions of Subscribers.	Number of Shares taken by each Subscriber.
" 1. John Jones of in the County of Merchant	200
" 2. John Smith of in the County of . .	25
" 3. Thomas Green of in the County of . .	30
" 4. John Thompson of in the County of . .	40
" 5. Caleb White of in the County of . .	15
" 6. Andrew Brown of in the County of . .	5
" 7. Cæsar White of in the County of . .	10
Total Shares taken . . .	325

Dated the 22d Day of November 1861.

Witness to the above Signatures,
A.B., No. 13, Hute Street, Clerkenwell, Middlesex.

FORM B.

Memorandum and Articles of Association of a Company limited by Guarantee, and not having a Capital divided into Shares.

Memorandum of Association.

1st. The Name of the Company is "The Mutual London Ma-"rine Association, Limited."

2d. The registered Office of the Company will be situate in England.

3d. The Objects for which the Company is established are, "the mutual Insurance of Ships belonging to Members of the "Company, and the doing all such other Things as are inci-"dental or conducive to the Attainment of the above Objects."

4th. Every Member of the Company undertakes to contribute to the Assets of the Company in the event of the same being wound up during the Time that he is a Member, or within One Year afterwards, for Payment of the Debts and Liabilities of the Company contracted before the Time at which he ceases to be a Member, and the Costs, Charges, and Expenses of winding up the same, and for the Adjustment of the Rights of the Contributories amongst themselves, such Amount as may be required not exceeding Ten Pounds.

We, the several Persons whose Names and Addresses are subscribed, are desirous of being formed into a Company, in pursuance of this Memorandum of Association.

Names, Addresses, and Descriptions of Subscribers.

"1. John Jones of in the County of Merchant.
"2. John Smith of in the County of
"3. Thomas Green of in the County of
"4. John Thompson of in the County of
"5. Caleb White of in the County of
"6. Andrew Brown of in the County of
"7. Cæsar White of in the County of

Dated the 22d Day of November 1861.

Witness to the above Signatures,
A.B., No. 13, Hute Street, Clerkenwell, Middlesex.

ARTICLES of ASSOCIATION to accompany preceding MEMORANDUM of ASSOCIATION.

(1.) The Company, for the Purpose of Registration, is declared to consist of Five hundred Members.

(2.) The Directors herein-after mentioned may, whenever the Business of the Association requires it, register an Increase of Members.

Definition of Members.

(3.) Every Person shall be deemed to have agreed to become a Member of the Company who insures any Ship or Share in a Ship in pursuance of the Regulations herein-after contained.

General Meetings.

(4.) The First General Meeting shall be held at such Time, not being more than Three Months after the Incorporation of Company, and at such Place, as the Directors may determine.

(5.) Subsequent General Meetings shall be held at such Time and Place as may be prescribed by the Company in General Meeting; and if no other Time or Place is prescribed, a General Meeting shall be held on the First Monday in February in every Year, at such Place as may be determined by the Directors.

(6.) The above-mentioned General Meetings shall be called Ordinary Meetings; all other General Meetings shall be called Extraordinary.

(7.) The Directors may, whenever they think fit, and they shall, upon a Requisition made in Writing by any Five or more Members, convene an Extraordinary General Meeting.

(8.) Any Requisition made by the Members shall express the

Object of the Meeting proposed to be called, and shall be left at the registered Office of the Company.

(9.) Upon the Receipt of such Requisition the Directors shall forthwith proceed to convene a General Meeting: If they do not proceed to convene the same within Twenty-one Days from the Date of the Requisition, the Requisionists, or any other Five Members, may themselves convene a Meeting.

Proceedings at General Meetings.

(10.) Seven Days Notice at the least, specifying the Place, the Day, and the Hour of Meeting, and in case of special Business the general Nature of such Business, shall be given to the Members in manner herein-after mentioned, or in such other Manner, if any, as may be prescribed by the Company in General Meeting; but the Non-receipt of such Notice by any Member shall not invalidate the Proceedings at any General Meeting.

(11.) All Business shall be deemed special that is transacted at an Extraordinary Meeting, and all that is transacted at an Ordinary Meeting, with the Exception of the Consideration of the Accounts, Balance Sheets, and the ordinary Report of the Directors.

(12.) No Business shall be transacted at any Meeting except the Declaration of a Dividend, unless a Quorum of Members is present at the Commencement of such Business; and such Quorum shall be ascertained as follows; that is to say, if the Members of the Company at the Time of the Meeting do not exceed Ten in Number, the Quorum shall be Five; if they exceed Ten there shall be added to the above Quorum One for every Five additional Members up to Fifty, and One for every Ten additional Members after Fifty, with this Limitation, that no Quorum shall in any Case exceed Thirty.

(13.) If within One Hour from the Time appointed for the Meeting a Quorum of Members is not present, the Meeting, if convened upon the Requisition of the Members, shall be dissolved: In any other Case it shall stand adjourned to the same Day in the following Week at the same Time and Place; and if at such adjourned Meeting a Quorum of Members is not present, it shall be adjourned sine die.

(14.) The Chairman (if any) of the Directors shall preside as Chairman at every General Meeting of the Company.

(15.) If there is no such Chairman, or if at any Meeting he is not present at the Time of holding the same, the Members present shall choose some One of their Number to be Chairman of such Meeting.

(16.) The Chairman may, with the Consent of the Meeting, adjourn any Meeting from Time to Time and from Place to

Place, but no Business shall be transacted at any adjourned Meeting other than the Business left unfinished at the Meeting from which the Adjournment took place.

(17.) At any General Meeting, unless a Poll is demanded by at least Five Members, a Declaration by the Chairman that a Resolution has been carried, and an Entry to that Effect in the Book of Proceedings of the Company, shall be sufficient Evidence of the Fact, without Proof of the Number or Proportion of the Votes recorded in favour of or against such Resolution.

(18.) If a Poll is demanded in manner aforesaid, the same shall be taken in such Manner as the Chairman directs, and the Result of such Poll shall be deemed to be the Resolution of the Company in General Meeting.

Votes of Members.

(19.) Every Member shall have One Vote and no more.

(20.) If any Member is a Lunatic or Idiot he may vote by his Committee, Curator bonis, or other legal Curator.

(21.) No Member shall be entitled to vote at any Meeting unless all Monies due from him to the Company have been paid.

(22.) Votes may be given either personally or by Proxies: A Proxy shall be appointed in Writing under the Hand of the Appointor, or if such Appointor is a Corporation, under its Common Seal.

(23.) No Person shall be appointed a Proxy who is not a Member, and the Instrument appointing him shall be deposited at the registered Office of the Company not less than Forty-eight Hours before the Time of holding the Meeting at which he proposes to vote.

(24.) Any Instrument appointing a Proxy shall be in the following Form:—

Company Limited.

I of in the County of being a Member of the Company Limited, hereby appoint of as my Proxy, to vote for me and on my Behalf at the [Ordinary *or* Extraordinary, *as the Case may be*] General Meeting of the Company to be held on the Day of , and at any Adjournment thereof to be held on the Day of next [*or*, at any Meeting of the Company that may be held in the Year].

As witness my Hand, this Day of .

Signed by the said in the Presence of .

Directors.

(25.) The Number of the Directors, and the Names of the First Directors, shall be determined by the Subscribers of the Memorandum of Association.

(26.) Until Directors are appointed, the Subscribers of the Memorandum of Association shall for all the Purposes of this Act be deemed to be Directors.

Powers of Directors.

(27.) The Business of the Company shall be managed by the Directors, who may exercise all such Powers of the Company as are not hereby required to be exercised by the Company in General Meeting; but no Regulation made by the Company in General Meeting shall invalidate any prior Act of the Directors which would have been valid if such Regulation had not been made.

Election of Directors.

(28.) The Directors shall be elected annually by the Company in General Meeting.

Business of Company.

[*Here insert Rules as to Mode in which Business of Insurance is to be conducted.*]

Accounts.

(29.) The Accounts of the Company shall be Audited by a Committee of Five Members, to be called the Audit Committee.

(30.) The first Audit Committee shall be nominated by the Directors out of the body of Members.

(31.) Subsequent Audit Committees shall be nominated by the Members at the Ordinary General Meeting in each Year.

(32.) The Audit Committee shall be supplied with a Copy of the Balance Sheet, and it shall be their Duty to examine the same with the Accounts and Vouchers relating thereto.

(33.) The Audit Committee shall have a List delivered to them of all Books kept by the Company, and they shall at all reasonable Times have Access to the Books and Accounts of the Company: They may, at the Expense of the Company, employ Accountants or other Persons to assist them in investigating such Accounts, and they may in relation to such Accounts examine the Directors or any other Officer of the Company.

(34.) The Audit Committee shall make a Report to the Members upon the Balance Sheet and Accounts, and in every

such Report they shall state whether in their Opinion the Balance Sheet is a full and fair Balance Sheet, containing the Particulars required by these Regulations of the Company, and properly drawn up, so as to exhibit a true and correct View of the State of the Company's Affairs, and in case they have called for Explanation or Information from the Directors, whether such Explanations or Information have been given by the Directors, and whether they have been satisfactory, and such Report shall be read together with the Report of the Directors at the Ordinary Meeting.

Notices.

(35.) A Notice may be served by the Company upon any Member either personally, or by sending it through the Post in a prepaid Letter addressed to such Member at his registered Place of Abode.

(36.) Any Notice, if served by Post, shall be deemed to have been served at the Time when the Letter containing the same would be delivered in the Ordinary Course of the Post; and in proving such Service it shall be sufficient to prove that the Letter containing the Notice was properly addressed, and put into the Post Office.

Winding up.

(37.) The Company shall be wound up voluntarily whenever an Extraordinary Resolution, as defined by the Companies Act, 1862, is passed, requiring the Company to be wound up voluntarily.

Names, Addresses, and Descriptions of Subscribers.

" 1. John Jones of in the County of Merchant.
" 2. John Smith of in the County of
" 3. Thomas Green of in the County of
" 4. John Thompson of in the County of
" 5. Caleb White of in the County of
" 6. Andrew Brown of in the County of
" 7. Cæsar White of in the County of

Dated the 22d Day of November 1861.

Witness to the above Signatures,
A.B., No. 13, Hute Street, Clerkenwell, Middlesex.

FORM C.

MEMORANDUM and ARTICLES of ASSOCIATION of a Company limited by Guarantee, and having a Capital divided into Shares.

Memorandum of Association.

1st. The Name of the Company is "The Highland Hotel "Company, Limited."

2d. The registered Office of the Company will be situate in Scotland.

3d. The Objects for which the Company is established are "the facilitating travelling in the Highlands of Scotland, by "providing Hotels and Conveyances by Sea and by Land for "the Accommodation of Travellers, and the doing all such other "Things as are incidental or conducive to the Attainment of the "above Object."

4th. Every Member of the Company undertakes to contribute to the Assets of the Company in the event of the same being wound up during the Time that he is a Member, or within One Year afterwards, for payment of the Debts and Liabilities of the Company contracted before the Time at which he ceases to be a Member, and the Costs, Charges, and Expenses of winding up the same, and for the Adjustment of the Rights of the Contributories amongst themselves, such Amount as may be required not exceeding Twenty Pounds.

WE, the several Persons whose Names and Addresses are subscribed, are desirous of being formed into a Company, in pursuance of this Memorandum of Association.

Names, Addresses, and Descriptions of Subscribers.

"1. John Jones of	in the County of	Merchant.
"2. John Smith of	in the County of	
"3. Thomas Green of	in the County of	
"4. John Thompson of	in the County of	
"5. Caleb White of	in the County of	
"6. Andrew Brown of	in the County of	
"7. Cæsar White of	in the County of	

Dated the 22d Day of November 1861.

Witness to the above Signatures,

A.B., No. 13, Hute Street, Clerkenwell, Middlesex.

Articles of Association to accompany preceding Memorandum of Association.

1. The Capital of the Company shall consist of Five hundred thousand Pounds, divided into Five thousand Shares of One hundred Pounds each.

2. The Directors may, with the Sanction of the Company in General Meeting, reduce the Amount of Shares.

3. The Directors may, with the Sanction of the Company in General Meeting, cancel any Shares belonging to the Company.

4. All the Articles of Table A. shall be deemed to be incorporated with these Articles, and to apply to the Company.

We, the several Persons whose Names and Addresses are subscribed, agree to take the Number of Shares in the Capital of the Company set opposite our respective Names.

Names, Addresses, and Descriptions of Subscribers.	Number of Shares taken by each Subscriber.
"1. John Jones of in the County of .	200
"2. John Smith of in the County of .	25
"3. Thomas Green of in the County of .	30
"4. John Thompson of in the County of .	40
"5. Caleb White of in the County of .	15
"6. Andrew Brown of in the County of .	5
"7. Cæsar White of in the County of .	10
Total Shares taken . . .	325

Dated the 22d Day of November 1861.

Witness to the above Signatures,
A.B., No. 13 Hute Street, Clerkenwell, Middlesex.

FORM D.

Memorandum and Articles of Association of an unlimited Company, having a Capital divided into Shares.

Memorandum of Association.

1st. The Name of the Company is "The Patent Stereotype "Company."

2d. The registered Office of the Company will be situate in England.

3d. The Objects for which the Company is established are "the working of a Patent Method of founding and casting Stereo- "type Plates, of which Method John Smith, of London, is the "sole patentee."

We, the several Persons whose Names are subscribed, are desirous of being formed into a Company, in pursuance of this Memorandum of Association.

Names, Addresses, and Descriptions of Subscribers.

"1. John Jones of in the County of Merchant.
"2. John Smith of in the County of
"3. Thomas Green of in the County of
"4. John Thompson of in the County of
"5. Caleb White of in the County of
"6. Andrew Brown of in the County of
"7. Abel Brown of in the County of

Dated 22d Day of November 1861.

Witness to the above Signatures,
A.B., No. 20, Bond Street, Middlesex.

Articles of Association to accompany the preceding Memorandum of Association.

Capital of the Company.

The Capital of the Company is Two thousand Pounds, divided into Twenty Shares of One hundred Pounds each.

Application of Table A.

All the Articles of Table A. shall be deemed to be incorporated with these Articles, and to apply to the Company.

We, the several Persons whose Names and Addresses are subscribed, agree to take the Number of Shares in the Capital of the Company set opposite our respective Names.

Names, Addresses, and Descriptions of Subscribers.	Number of Shares taken by Subscribers.
"1. John Jones of in the County of Merchant	1
"2. John Smith of in the County of .	5
"3. Thomas Green of in the County of .	2
"4. John Thompson of in the County of .	2
"5. Caleb White of in the County of .	3
"6. Andrew Brown of in the County of .	4
"7. Abel Brown of in the County of .	1
Total Shares taken . . .	18

Dated the 22d Day of November 1861.

Witness to the above Signatures,
A.B., No. 20, Bond Street, Middlesex.

FORM E. as required by the Second Part of the Act.

SUMMARY of CAPITAL and SHARES of the COMPANY, made up to the Day of

Nominal Capital £ divided into Shares of £ each.
Number of Shares taken up to the Day of .
There has been called up on each Share £
Total Amount of Calls received £
Total Amount of Calls unpaid £

LIST of Persons holding Shares in the Company on the Day of , and of Persons who have held Shares thereon at any Time during the Year immediately preceding the said Day of , showing their Names and Addresses, and an Account of the Shares so held.

Folio in Register Ledger containing Particulars.	NAMES ADDRESSES, AND OCCUPATIONS.				ACCOUNT OF SHARES.					Remarks.
	Surname.	Christian Name.	Address.	Occupation.	Shares held by existing Members on the Day of	Additional Shares held by existing Members during preceding Year.		Shares held by Persons no longer Members.		
						Number.	Date of Transfer.	Number.	Date of Transfer.	

FORM F.

Licence to hold Lands.

The Lords of the Committee of Privy Council appointed for the Consideration of Matters relating to Trade and Foreign Plantations hereby licence the Association, Limited, to hold the Lands hereunder described [*insert Description of Lands*]. The Conditions of this Licence are [*insert Conditions, if any*].

THIRD SCHEDULE.

FIRST PART.

Date and Chapter of Act.	Title of Act.
21 & 22 Geo. 3. c. 46. (Parliament of Ireland.)	An Act to promote Trade and Manufactures by regulating and encouraging Partnerships.
7 & 8 Vict. c. 110.	An Act for the Registration, Incorporation, and Regulation of Joint Stock Companies.
7 & 8 Vict. c. 111.	An Act for facilitating the winding up the Affairs of Joint Stock Companies unable to meet their pecuniary Engagements.
7 & 8 Vict. c. 113.	An Act to regulate Joint Stock Banks in England.
8 & 9 Vict. c. 98.	An Act for facilitating the winding up the Affairs of Joint Stock Companies in Ireland unable to meet their pecuniary Engagements.
9 & 10 Vict. c. 28.	An Act to facilitate the Dissolution of certain Railway Companies.
9 & 10 Vict. c. 75.	An Act to regulate Joint Stock Banks in Scotland and Ireland.
10 & 11 Vict. c. 78.	An Act to amend an Act for the Registration, Incorporation, and Regulation of Joint Stock Companies.
11 & 12 Vict. c. 45.	An Act to amend the Acts for facilitating the winding up the Affairs of Joint Stock Companies unable to meet their pecuniary Engagements, and also to facilitate the Dissolution and winding up of Joint Stock Companies and other Partnerships.
12 & 13 Vict. c. 108.	An Act to amend the Joint Stock Companies Winding-up Act, 1848.
19 & 20 Vict. c. 47.	An Act for the Incorporation and Regulation of Joint Stock Companies and other Associations.
20 & 21 Vict. c. 14.	An Act to amend the Joint Stock Companies Act, 1856.
20 & 21 Vict. c. 49.	An Act to amend the Law relating to Banking Companies.
20 & 21 Vict. c. 78.	An Act to amend the Act Seven and Eight Victoria, Chapter One hundred and eleven, for facilitating the winding up the Affairs of Joint Stock Companies unable to meet their pecuniary Engagements, and also the Joint Stock Companies Winding-up Acts, 1848 and 1849.
20 & 21 Vict. c. 80.	An Act to amend the Joint Stock Companies Act, 1856.
21 & 22 Vict. c. 60.	An Act to amend the Joint Stock Companies Acts, 1856 and 1857, and the Joint Stock Banking Companies Act, 1857.
21 & 22 Vict. c. 91.	An Act to enable Joint Stock Banking Companies to be formed on the principle of Limited Liability.

SECOND PART.

7 & 8 Vict. c. 113. s. 47.

Existing Companies to have the Powers of suing and being sued.

Every Company of more than Six Persons established on the Sixth Day of May One thousand eight hundred and forty-four, for the Purpose of carrying on the Trade or Business of Bankers within the Distance of Sixty-five Miles from London, and not within the Provisions of the Act passed in the Session holden in the Seventh and Eighth Years of the Reign of Her present Majesty, Chapter One hundred and thirteen, shall have the same Powers and Privileges of suing and being sued in the Name of any One of the Public Officers of such Copartnership as the nominal Plaintiff, Petitioner, or Defendant on behalf of such Copartnership; and all Judgments, Decrees, and Orders made and obtained in any such Suit may be enforced in like Manner as is provided with respect to such Companies carrying on the said Trade or Business at any Place in England exceeding the Distance of Sixty-five Miles from London, under the Provisions of an Act passed in the Seventh Year of the Reign of King George the Fourth, Chapter Forty-six, intituled "An Act for the better "regulating Copartnerships of certain Bankers in England, and "for amending so much of an Act of the Thirty-ninth and "Fortieth Years of the Reign of His late Majesty King George "the Third, intituled 'An Act for establishing an Agreement "'with the Governor and Company of the Bank of England for "'advancing the Sum of Three Millions towards the Supply for "'the Service of the Year One thousand eight hundred,' as "relates to the same," provided that such first-mentioned Company shall make out and deliver from Time to Time to the Commissioners of Stamps and Taxes the several Accounts or Returns required by the last-mentioned Act, and all the Provisions of the last-recited Act as to such Accounts or Returns shall be taken to apply to the Accounts or Returns so made out and delivered by such first-mentioned Companies as if they had been originally included in the Provisions of the last-recited Act.

20 & 21 Vict. c. 49., Part of Section XII.

Power to form Banking Partnerships of Ten Persons.

Notwithstanding anything contained in any Act passed in the Session holden in the Seventh and Eighth Years of the Reign of Her present Majesty, Chapter One hundred and thirteen, and intituled "An Act to regulate Joint Stock Banks in England," or in any other Act, it shall be lawful for any Number of Persons, not exceeding Ten, to carry on in Partnership the Business of Banking, in the same Manner and upon the same Conditions in all respects as any Company of not more than Six Persons could before the passing of this Act have carried on such Business.

COMPANIES AMENDMENT ACT, 1867.

CAP. CXXXI.

An Act to amend "The Companies Act, 1862."—
[20th August 1867.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Preliminary.

Short Title.

I. This Act may be cited for all purposes as "The Companies Act, 1867."

Act to be construed as one with 25 & 26 Vict. c. 89.

II. The Companies Act, 1862, is herein-after referred to as "the Principal Act;" and the principal Act and this Act are herein-after distinguished as and may be cited for all purposes as "The Companies Act, 1862 and 1867;" and this Act shall, so far as is consistent with the tenor thereof, be construed as one with the principal Act; and the expression "this Act" in the principal Act, and any expression referring to the principal Act which occurs in any Act or other document, shall be construed to mean the principal Act as amended by this Act.

Commencement of Act.

III. This Act shall come into force on the first day of *September* one thousand eight hundred and sixty-seven, which date is herein-after referred to as the commencement of this Act.

Unlimited Liability of Directors.

Company may have directors with un-

IV. Where after the commencement of this Act a company is formed as a limited company under the principal Act, the liability of the directors or managers of such company, or the

managing director, may, if so provided by the memorandum of association, be unlimited. limited liability.

V. The following modifications shall be made in the thirty-eighth section of the principal Act, with respect to the contributions to be required in the event of the winding up of a limited company under the principal Act, from any director or manager whose liability is, in pursuance of this Act, unlimited: Liability of director, past and present, where liability is unlimited.

(1.) Subject to the provisions herein-after contained, any such director or manager, whether past or present, shall, in addition to his liability (if any) to contribute as an ordinary member, be liable to contribute as if he were at the date of the commencement of such winding up a member of an unlimited company:

(2.) No contribution required from any past director or manager who has ceased to hold such office for a period of one year or upwards prior to the commencement of the winding up shall exceed the amount (if any) which he is liable to contribute as an ordinary member of the company:

(3.) No contribution required from any past director or manager in respect of any debt or liability of the company contracted after the Time at which he ceased to hold such office shall exceed the amount (if any) which he is liable to contribute as an ordinary member of the company:

(4.) Subject to the provisions contained in the regulations of the company no contribution required from any director or manager shall exceed the amount (if any) which he is liable to contribute as an ordinary member, unless the Court deems it necessary to require such contribution in order to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of the winding up.

VI. In the event of the winding up of any limited company, the Court, if it think fit, may make to any director or manager of such company whose liability is unlimited the same allowance by way of set-off as under the one hundred and first section of the principal Act it may make to a contributory where the company is not limited. Director with unlimited liability may have set-off as under Sect. 101 of 25 & 26 Vict. c. 89.

VII. In any limited company in which, in pursuance of this Act, the liability of a director or manager is unlimited, the directors or managers of the company (if any), and the member who proposes any person for election or appointment to such office, shall add to such proposal a statement that the liability of the person holding such office will be unlimited, Notice to be given to director on his election that his liability

will be unlimited.

and the promoters, directors, managers, and secretary (if any) of such company, or one of them, shall, before such person accepts such office or acts therein, give him notice in writing that his liability will be unlimited.

If any director, manager, or proposer make default in adding such statement, or if any promoter, director, manager, or secretary make default in giving such notice, he shall be liable to a penalty not exceeding one hundred pounds, and shall also be liable for any damage which the person so elected or appointed may sustain from such default, but the liability of the person elected or appointed shall not be affected by such default.

Existing limited company may, by special resolution, make liability of directors unlimited.

VIII. Any limited company under the principal Act, whether formed before or after the commencement of this Act, may, by a special resolution, if authorised so to do by its regulations, as originally framed or as altered by special resolution, from time to time modify the conditions contained in its memorandum of association so far as to render unlimited the liability of its directors or managers, or of the managing directors; and such special resolution shall be of the same validity as if it had been originally contained in the memorandum of association, and a copy thereof shall be embodied in or annexed to every copy of the memorandum of Association which is issued after the passing of the resolution, and any default in this respect shall be deemed to be a default in complying with the provisions of the fifty-fourth section of the principal Act, and shall be punished accordingly.

Reduction of Capital and Shares.

Power to company to reduce capital.

IX. Any company limited by shares may, by special resolution, so far modify the conditions contained in its memorandum of association, if authorised so to do by its regulations as originally framed or as altered by special resolution, as to reduce its capital: but no such resolution for reducing the capital of any company shall come into operation until an order of the court is registered by the registrar of joint stock companies, as is herein-after mentioned.

Company to add "and reduced" to its name for a limited period.

X. The company shall, after the date of the passing of any special resolution for reducing its capital, add to its name, until such date as the Court may fix, the words, "and reduced," as the last words in its name, and those words shall, until such date, be deemed to be part of the name of the company within the meaning of the principal Act.

Company to apply to the Court for an

XI. A company which has passed a special resolution for reducing its capital, may apply to the Court by petition for an order confirming the reduction, and on the hearing of the

petition the Court, if satisfied that with respect to every creditor of the company who under the provisions of this Act is entitled to object to the reduction, either his consent to the reduction has been obtained, or his debt or claim has been discharged or has determined, or has been secured as hereinafter provided, may make an order confirming the reduction on such terms and subject to such conditions as it deems fit. order confirming reduction.

XII. The expression "the Court," shall in this Act mean the Court which has jurisdiction to make an order for winding up the petitioning company, and the eighty-first and eighty-third sections of the principal Act shall be construed as if the term "winding up" in those sections included proceeding under this Act, and the Court may in any proceedings under this Act make such order as to costs as it deems fit. Definition of the Court.

XIII. Where a company proposes to reduce its capital, every creditor of the company who at the date fixed by the Court is entitled to any debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company, shall be entitled to object to the proposed reduction, and to be entered in the list of creditors who are so entitled to object. Creditors may object to reduction, and list of objecting creditors to be settled by the Court.

The Court shall settle a list of such creditors, and for that purpose shall ascertain as far as possible without requiring an application from any creditor the names of such creditors and the nature and amount of their debts or claims, and may publish notices fixing a certain day or days within which creditors of the company who are not entered on the list are to claim to be so entered or to be excluded from the right of objecting to the proposed reduction.

XIV. Where a creditor whose name is entered on the list of creditors, and whose debt or claim is not discharged or determined, does not consent to the proposed reduction, the Court may (if it think fit) dispense with such consent on the company securing the payment of the debt or claim of such creditor by setting apart and appropriating in such manner as the Court may direct, a sum of such amount as is herein-after mentioned; (that is to say,) Court may dispense with consent of creditor on security being given for his debt.

(1.) If the full amount of the debt or claim of the creditor is admitted by the company, or, though not admitted, is such as the company are willing to set apart and appropriate, then the full amount of the debt or claim shall be set apart and appropriated.

(2.) If the full amount of the debt or claim of the creditor is not admitted by the company, and is not such as the company are willing to set apart and appropriate, or if the amount is contingent or not ascer-

tained, then the Court may, if it think fit, inquire into and adjudicate upon the validity of such debt or claim, and the amount for which the company may be liable in respect thereof, in the same manner as if the company were being wound up by the Court, and the amount fixed by the Court on such inquiry and adjudication shall be set apart and appropriated.

Order and minute to be registered.

XV. The registrar of joint stock companies upon the production to him of an order of the Court confirming the reduction of the capital of a company, and the delivery to him of a copy of the order and of a minute (approved by the Court), showing with respect to the capital of the company, as altered by the order, the amount of such capital, the number of shares in which it is to be divided, and the amount of each share, shall register the order and minute, and on the registration the special resolution confirmed by the order so registered shall take effect.

Notice of such registration shall be published in such manner as the Court may direct.

The registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requisitions of this Act with respect to the reduction of capital have been complied with, and that the capital of the company is such as is stated in the minute.

Minute to form part of memorandum of association.

XVI. The minute when registered shall be deemed to be substituted for the corresponding part of the memorandum of association of the company, and shall be of the same validity and subject to the same alterations as if it had been originally contained in the memorandum of association; and, subject as in this Act mentioned, no member of the company, whether past or present, shall be liable in respect of any share to any call or contribution exceeding in amount the difference (if any) between the amount which has been paid on such share and the amount of the share as fixed by the minute.

Saving of rights of creditors who are ignorant of proceedings.

XVII. If any creditor who is entitled in respect of any debt or claim to object to the reduction of the capital of a company under this Act is, in consequence of his ignorance of the proceedings taken with a view to such reduction, or of their nature and effect with respect to his claim, not entered on the list of creditors, and after such reduction the company is unable, within the meaning of the eightieth section of the principal Act, to pay to the creditor the amount of such debt or claim, every person who was a member of the company at the date of the registration of the order and minute relating to the reduction of the capital of the company, shall be liable to contribute for the payment of such

debt or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day prior to such registration, and on the company being wound up, the Court on the application of such creditor, and on proof that he was ignorant of the proceedings taken with a view to the reduction, or of their nature and effect with respect to his claim, may, if it think fit, settle a list of such contributories accordingly, and make and enforce calls and orders on the contributories settled on such list in the same manner in all respects as if they were ordinary contributories in a winding-up; but the provisions of this section shall not affect the rights of the contributories of the company among themselves.

Copy of registered minute.

XVIII. A minute when registered shall be embodied in every copy of the memorandum of association issued after its registration; and if any company makes default in complying with the provisions of this section it shall incur a penalty not exceeding one pound for each copy in respect of which such default is made, and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall incur the like penalty.

Penalty on concealment of name of creditor.

XIX. If any director, manager, or officer of the company wilfully conceals the name of any creditor of the company who is entitled to object to the proposed reduction, or wilfully misrepresents the nature or amount of the debt or claim of any creditor of the company, or if any director or manager of the company aids or abets in or is privy to any such concealment or misrepresentation as aforesaid, every such director, manager, or officer shall be guilty of a misdemeanor.

Power to make rules extended to making rules concerning matters in this Act.

XX. The powers of making rules concerning winding up conferred by the one hundred and seventieth, one hundred and seventy-first, one hundred and seventy-second, and one hundred and seventy-third sections of the principal Act shall respectively extend to making rules concerning matters in which jurisdiction is by this Act given to the Court which has the power of making an order to wind up a company, and until such rules are made the practice of the Court in matters of the same nature shall, so far as the same is applicable, be followed.

Subdivision of Shares.

Shares may be divided into shares of smaller amount.

XXI. Any company limited by shares may by special resolution so far modify the conditions contained in its memorandum of association, if authorized so to do by its regulations as originally framed or as altered by special resolution, as by subdivision of its existing shares or any of

them, to divide its capital, or any part thereof, into shares of smaller amount than is fixed by its memorandum of association.

Provided, that in the subdivision of the existing shares the proportion between the amount which is paid and the amount (if any) which is unpaid on each share of reduced amount shall be the same as it was in the case of the existing share or shares from which the share of reduced amount is derived.

Special resolution to be embodied in memorandum of association.

XXII. The statement of the number and amount of the shares into which the capital of the company is divided contained in every copy of the memorandum of association issued after the passing of any such special resolution, shall be in accordance with such resolution; and any company which makes default in complying with the provisions of this section shall incur a penalty not exceeding one pound for each copy in respect of which such default is made; and every director and manager of the company who knowingly or wilfully authorizes or permits such default shall incur the like penalty.

Associations not for Profit.

Special provisions as to associations formed for purposes not of gain.

XXIII. Where any association is about to be formed under the principal Act as a limited company, if it proves to the Board of Trade that it is formed for the purpose of promoting commerce, art, science, religion, charity, or any other useful object, and that it is the intention of such association to apply the profits, if any, or other income of the association, in promoting its objects, and to prohibit the payment of any dividend to the members of the association, the Board of Trade may by licence, under the hand of one of the secretaries or assistant secretaries, direct such association to be registered with limited liability, without the addition of the word limited to its name, and such association may be registered accordingly, and upon registration shall enjoy all the privileges and be subject to the obligations by this Act imposed on limited companies, with the exceptions that none of the provisions of this Act that require a limited company to use the word limited as any part of its name, or to publish its name, or to send a list of its members, directors, or managers to the registrar, shall apply to an association so registered.

The licence by the Board of Trade may be granted upon such conditions and subject to such regulations as the Board think fit to impose, and such conditions and regulations shall be binding on the association, and may, at the option of the said Board, be inserted in the memorandum and articles of association, or in both or one of such documents.

Calls upon Shares.

Company may have some shares fully paid and others not.

XXIV. Nothing contained in the principal Act shall be deemed to prevent any company under that Act, if authorized by its regulations as originally framed or as altered by special resolution, from doing any one or more of the following things; namely,—

(1.) Making arrangements on the issue of shares for a difference between the holders of such shares in the amount of calls to be paid, and in the time of payment of such calls:

(2.) Accepting from any member of the company who assents thereto the whole or a part of the amount remaining unpaid on any share or shares held by him, either in discharge of the amount of a call payable in respect of any other share or shares held by him or without any call having been made:

(3.) Paying dividend in proportion to the amount paid up on each share in cases where a larger amount is paid up on some shares than on others.

Manner in which shares are to be issued and held.

XXV. Every share in any company shall be deemed and taken to have been issued and to be held subject to the payment of the whole amount thereof in cash, unless the same shall have been otherwise determined by a contract duly made in writing, and filed with the Registrar of Joint Stock Companies at or before the issue of such shares.

Transfer of Shares.

Transfer may be registered at request of transferor.

XXVI. A company shall on the application of the transferor of any share or interest in the company enter in its register of members the name of the transferee of such share or interest, in the same manner and subject to the same conditions as if the application for such entry were made by the transferee.

Share Warrants to Bearer.

Warrant of limited shares fully paid up may be issued in name of bearer.

XXVII. In the case of a company limited by shares, the company, if authorized so to do by its regulations, as originally framed or as altered by special resolution, and subject to the provisions of such regulations, may, with respect to any share which is fully paid up, or with respect to stock, issue under their common seal a warrant stating that the bearer of the warrant is entitled to the share or shares or stock therein specified, and may provide, by coupons or otherwise, for the payment of the future dividends on the share or shares or

stock included in such warrant, herein-after referred to as a share warrant.

Effect of share warrant.

XXVIII. A share warrant shall entitle the bearer of such warrant to the shares or stock specified in it, and such shares or stock may be transferred by the delivery of the share warrant.

Re-registration of bearer of a share warrant in the register.

XXIX. The bearer of a share warrant shall, subject to the regulations of the company, be entitled, on surrendering such warrant for cancellation, to have his name entered as a member in the register of members, and the company shall be responsible for any loss incurred by any person by reason of the company entering in its register of members the name of any bearer of a share warrant in respect of the shares or stock specified therein without the share warrant being surrendered and cancelled.

Regulations of the company may make the bearer of a share warrant a member.

XXX. The bearer of a share warrant may, if the regulations of the company so provide, be deemed to be a member of the company within the meaning of the principal Act, either to the full extent or for such purposes as may be prescribed by the regulations:

Provided that the bearer of a share warrant shall not be qualified in respect of the shares or stock specified in such warrant for being a director or manager of the company in cases where such a qualification is prescribed by the regulations of the company.

Entries in register where share warrant issued.

XXXI. On the issue of a share warrant in respect of any share or stock the company shall strike out of its register of members the name of the member then entered therein as holding such share or stock as if he had ceased to be a member, and shall enter in the register the following particulars:

(1.) The fact of the issue of the warrant:

(2.) A statement of the shares or stock included in the warrant, distinguishing each share by its number:

(3.) The date of the issue of the warrant:

And until the warrant is surrendered the above particulars shall be deemed to be the particulars which are required by the twenty-fifth section of the principal Act to be entered in the register of members of a company; and on the surrender of a warrant the date of such surrender shall be entered as if it were the date at which a person ceased to be a member.

Particulars to be contained in annual summary.

XXXII. After the issue by the company of a share warrant the annual summary required by the twenty-sixth section of the principal Act shall contain the following particulars,—the total amount of shares or stock for which share warrants are outstanding at the date of the summary, and the total amount of share warrants which have been issued and surrendered respectively since the last summary was made, and

the number of shares or amount of stock comprised in each warrant.

Stamps on share warrants.

XXXIII. There shall be charged on every share warrant a stamp duty of an amount equal to three times the amount of the *ad valorem* stamp duty which would be chargeable on a deed transferring the share or shares or stock specified in the warrant, if the consideration for the transfer were the nominal value of such share or shares or stock.

Penalties on persons committing forgery.

XXXIV. Whosoever forges or alters, or offers, utters, disposes of, or puts off, knowing the same to be forged, or altered, any share warrant or coupon or any document purporting to be a share warrant or coupon, issued in pursuance of this Act, or demands or endeavours to obtain or receive any share or interest of or in any company under the principal Act, or to receive any dividend or money payable in respect thereof, by virtue of any such forged or altered share warrant, coupon, or document, purporting as aforesaid, knowing the same to be forged or altered, with intent in any of the cases aforesaid to defraud, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for life or for any term not less than five years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

Penalties on persons falsely personating owner of shares.

XXXV. Whosoever falsely and deceitfully personates any owner of any share or interest of or in any company, or of any share warrant or coupon issued in pursuance of this Act, and thereby obtain or endeavours to obtain any such share or interest, or share warrant or coupon, or receives or endeavours to receive any money due to any such owner, as if such offender were the true and lawful owner, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for life or for any term not less than five years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

Penalties on persons engraving plates, &c.

XXXVI. Whosoever, without lawful authority or excuse, the proof whereof shall be on the party accused, engraves or makes upon any plate, wood, stone, or other material any share warrant or coupon purporting to be a share warrant or coupon issued or made by any particular company under and in pursuance of this Act, or to be a blank share warrant or coupon issued or made as aforesaid, or to be a part of such a share warrant or coupon, or uses any such plate, wood, stone, or other material for the making or printing any such share warrant or coupon, or any such blank share warrant or coupon, or any part thereof respectively, or knowingly has in his custody

or possession any such plate, wood, stone, or other material, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding fourteen years and not less than five years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

Contracts.

Contracts, how made.

XXXVII. Contracts on behalf of any company under the principal Act may be made as follows; (that is to say,)

(1.) Any contract which if made between private persons would be by law required to be in writing, and if made according to English law to be under seal, may be made on behalf of the company in writing, under the common seal of the company, and such contract may be in the same manner varied or discharged:

(2.) Any contract which if made between private persons would be by law required to be in writing, and signed by the parties to be charged therewith, may be made on behalf of the company in writing signed by any person acting under the express or implied authority of the company, and such contract may in the same manner be varied or discharged:

(3.) Any contract which if made between private persons would by law be valid although made by parol only, and not reduced into writing, may be made by parol on behalf of the company by any person acting under the express or implied authority of the company, and such contract may in the same way be varied or discharged:

And all contracts made according to the provisions herein contained shall be effectual in law, and shall be binding upon the company and their successors and all other parties thereto, their heirs, executors, or administrators, as the case may be.

Prospectus, &c. to specify dates and names of parties to any contract made prior to issue of such prospectus, &c.

XXXVIII. Every prospectus of a company, and every notice inviting persons to subscribe for shares in any joint stock company, shall specify the dates and the names of the parties to any contract entered into by the company, or the promoters, directors, or trustees thereof, before the issue of such prospectus or notice, whether subject to adoption by the directors or the company, or otherwise; and any prospectus or notice not specifying the same shall be deemed fraudulent on the part of the promoters, directors, and officers of the company knowingly issuing the same, as regards any person

taking shares in the company on the faith of such prospectus, unless he shall have had notice of such contract.

Meetings.

Company to hold meeting within four months after registration.

XXXIX. Every company formed under the principal Act after the commencement of this Act shall hold a general meeting within four months after its memorandum of association is registered; and if such meeting is not held the company shall be liable to a penalty not exceeding five pounds a day for every day after the expiration of such four months until the meeting is held; and every director or manager of the company, and every subscriber of the memorandum of association, who knowingly authorises or permits such default, shall be liable to the same penalty.

Winding-up.

Contributory when not qualified to present winding-up petition.

XL. No contributory of a company under the principal Act shall be capable of presenting a petition for winding-up such company unless the members of the company are reduced in number to less than seven, or unless the shares in respect of which he is a contributory, or some of them, either were originally allotted to him or have been held by him, and registered in his name, for a period of at least six months during the eighteen months previously to the commencement of the winding-up, or have devolved upon him through the death of a former holder:

Provided that where a share has during the whole or any part of the six months been held by or registered in the name of the wife of a contributory either before or after her marriage, or by or in the name of any trustee or trustees for such wife or for the contributory, such shares shall for the purposes of this section be deemed to have been held by and registered in the name of the contributory.

Winding-up may be referred to county court.

XLI. Where the High Court of Chancery in *England* makes an order for winding-up a company under the principal Act, it may, if it thinks fit, direct all subsequent proceedings to be had in a county court held under an Act of the session of the ninth and tenth years of the reign of her present Majesty, chapter ninety-five, and the Acts amending the same; and thereupon such county court shall, for the purpose of winding-up the company, be deemed to be "the court" within the meaning of the principal Act, and shall have, for the purposes of such winding-up, all the jurisdiction and powers of the High Court of Chancery.

XLII. If during the progress of a winding-up it is made to

As to transfer of suit from one county court to another.

appear to the High Court of Chancery that the same could be more conveniently prosecuted in any other county court, it shall be competent for the High Court of Chancery to transfer the same to such other county court, and thereupon the winding-up shall proceed in such other county court.

Parties aggrieved may appeal.

XLIII. If any party in a winding-up under this Act is dissatisfied with the determination or direction of a judge of a county court on any matter in such winding-up, such party may appeal from the same to the Vice-Chancellor named for that purpose by the Lord Chancellor by general order: Provided that such party shall, within thirty days after such determination or direction, give notice of such appeal to the other party or his attorney, and also deposit with the registrar of the county court the sum of ten pounds as security for the costs of the appeal; and the said court of appeal may make such final or other decree or order as it thinks fit, and may also makes such order with respect to the costs of the said appeal as such court may think proper, and such orders shall be final.

Powers to frame rules and orders under Sect. 32, of 19 & 20 Vict. c. 108.

XLIV. The county court judges appointed or to be appointed by the Lord Chancellor from time to time to frame rules and orders for regulating the practice of the courts, and forms of proceedings therein, under the thirty-second section of an Act passed in the nineteenth and twentieth years of the reign of her present Majesty, chapter one hundred and eight, shall frame the rules and orders for regulating the practice of the county courts under this Act, and forms of proceedings therein, and from time to time may amend such rules, orders, and forms; and such rules, orders, and forms, or amended rules, orders, and forms, certified under the hands of such judges or of any three or more of them, shall be submitted to the Lord Chancellor, who may allow or disallow or alter the same, and so from time to time; and the rules, orders, and forms, or amended rules, orders, and forms, so allowed or altered, shall from a day to be named by the Lord Chancellor be in force in every county court.

Scale of costs to be framed by the judges.

XLV. The county court judges mentioned in the last section shall be empowered to frame a scale of costs and charges to be paid to counsel and attorneys with respect to all proceedings in a winding-up under this Act, and from time to time to amend such scale; and such scale or amended scale, certified under the hands of such judges or any three or more of them, shall be submitted to the Lord Chancellor, who from time to time may allow or disallow or alter the same; and the scale or amended scale so allowed or altered shall, from a day to be named by the Lord Chancellor, be in force in every county court.

XLVI. The registrars and high bailiffs of the county courts shall be remunerated for the duties to be performed by them under this Act, by receiving, for their own use, such fees as may be from time to time authorised to be taken by any orders to be made by the Commissioners of the Treasury, with the consent of the Lord Chancellor; and the Commissioners of the Treasury are hereby authorised and empowered, with such consent as aforesaid, from time to time to make such orders: Provided that it shall be lawful for the said commissioners, with the like consent as aforesaid, by an order to direct that after the date named in the order any registrar or high bailiff shall, in lieu of receiving such fees, be paid such fixed or fluctuating allowance as may in each case be thought just, and after such date the said fees shall be accounted for and paid over by such registrar or high bailiff in such manner as may be directed in the order. Remuneration of registrars and high bailiffs in winding-up of companies.

Saving.

XLVII. Nothing in this Act contained shall exempt any company from the second or third provisions of the one hundred and ninety-sixth section of the principal Act restraining the alteration of any provision in any Act of Parliament or charter. Not to exempt companies from provisions of Sect. 196 of 25 & 26 Vict. c. 89.

JOINT STOCK COMPANIES ARRANGEMENT ACT, 1870.

33 & 34 VICT. CAP. CIV.

An Act to facilitate Compromises and Arrangements between Creditors and Shareholders of Joint Stock and other Companies in Liquidation.—[10th August 1870.]

WHEREAS it is expedient to amend the law relating to the liquidation of joint stock and other companies: Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

I. This Act may be cited as "The Joint Stock Companies Arrangement Act, 1870."

Where compromise proposed, Court of Chancery may order a meeting of creditors, &c., to decide as to such compromise.

II. Where any compromise or arrangement shall be proposed between a company, which is at the time of the passing of this Act or afterwards, in the course of being wound up, either voluntarily or by or under the supervision of the Court under the Companies Acts 1862 and 1867, or either of them, and the creditors of such company, or any class of such creditors, it shall be lawful for the Court, in addition to any other of its powers, on the application in a summary way of any creditor or the liquidator, to order that a meeting of such creditors or class of creditors shall be summoned in such manner as the Court shall direct, and if a majority in number representing three fourths in value of such creditors or class of creditors present, either in person or by proxy, at such meeting shall agree to any arrangement or compromise, such arrangement or compromise shall, if sanctioned by an order of the Court, be binding on all such creditors or class of creditors, as the case may be, and also on the liquidator and contributories of the said company.

Interpretation.

III. The word "Company" in this Act shall mean any company liable to be wound up under "The Companies Act, 1862."

Act and Companies Act to be read together.

IV. This Act shall be read and construed as part of "The Companies Act, 1862."

PART III.

FORMS IN INSOLVENCY AND BANKRUPTCY.

PART III.

FORMS IN INSOLVENCY AND BANKRUPTCY.

No. I.

Petition under Act 1621.

In the Sheriff Court of shire at ,

A. B., accountant in G., trustee on the sequestrated estate of D. E., merchant in F., conform to act and warrant of confirmation in his favour, dated the day of , herewith produced, pursuer,

Against

C. D., merchant in G., defender.

The above-named pursuer submits to the Court the condescendence and note of pleas in law hereto annexed, and prays the Court

To find to have been from the beginning and to be in all time coming null and of none avail, force, or effect, and to set aside the endorsation, transference, and delivery of a promissory note, dated the day of , granted by M. N., manufacturer in G., to the bankrupt, the said D. E., for the sum of £200, and payable two months after date, and which endorsation, transference, and delivery were made and granted to the defender by the bankrupt on or about the day of : and to decern that the defender deliver up the said promissory note to the pursuer, and failing his doing so, to decern against the defender for payment of £200, being the contents thereof, and as damages for non-delivery of the same with interest thereon from the date of citation to this action, and expenses.

Condescendence.

1. That on the day of , the whole estates, wherever situated, of the said D. E. were seques-

trated by the Lord Ordinary officiating on the Bills, in virtue of the "Bankruptcy (Scotland) Act, 1856," and Acts explaining and amending the same.

2. That the pursuer was elected trustee in said sequestration at the meeting of creditors held on the day of ; and his election was thereafter duly confirmed, as shown by the act and warrant herewith produced.

3. That the pursuer represents the creditors on the said sequestrated estates, and who were true creditors of the said D. E. at and prior to the time of his granting the endorsation, transference, and delivery aftermentioned, and still are creditors of the said D. E.

4. That the pursuer finds that, on or about the day of , the said D. E., the bankrupt, endorsed, transferred, and delivered to the defender a promissory note, dated the day of , for the sum of £200, and granted by M. N., manufacturer in G., in favour of the bankrupt.

5. That the said endorsation, transference, and delivery were so made and granted to the defender, who is a brother of the bankrupt, and a conjunct and confident person with him, without any true, just, or necessary cause, and without any value being given therefor, and when the bankrupt was in insolvent circumstances, and with a view to defraud his lawful prior creditors represented by the pursuer.

Note of Pleas in Law.

1. The endorsation in question being granted by the bankrupt to a conjunct and confident person, and when in insolvent circumstances, without any value, and to the prejudice of prior creditors, is liable to be set aside.

2. That in terms of the Act 1621, c. 18, and the Bankruptcy (Scotland) Act, 1856, and the Acts explaining and amending the same, the pursuer is entitled to decree as craved, with expenses.

R. S., No. Street, (Town),
Law Agent of the Pursuer.

No. II.

Petition under Act 1696.

In the Sheriff Court of shire at ,
A. B., accountant in G., trustee on the sequestrated estate

D. E., tea merchant in F., conform to act and warrant of confirmation in his favour, dated the day of , to be produced herewith, pursuer,

Against

C. D., merchant in G., defender.

The above named pursuer submits to the Court the condescendence and note of pleas in law hereto annexed, and prays the Court

To find to be null and void, and to set aside an alienation, transference, and delivery of 250 chests of tea, made and granted by the bankrupt, the said D. E., on or about the day of , in favour of the defender: and to ordain the defender to deliver up to the pursuer, as trustee foresaid, the said 250 chests of tea: And failing his doing so, then to grant decree against the defender, ordaining him to pay to the pursuer the sum of £ , being the just price and value of the said 250 chests of tea, or as damages for non-delivery of the same, with interest thereon from the date of citation to this action, with expenses.

Condescendence.

1. That on the day of , the whole estates, wherever situated, of the said C. D., were sequestrated by the Lord Ordinary officiating on the Bills, by virtue of the "Bankruptcy (Scotland) Act, 1856," and Acts explaining and amending the same.

2. That the pursuer was elected trustee in said sequestration at the meeting of creditors held on the day of ; and his election was thereafter duly declared and confirmed, as shown by the act and warrant herewith produced.

3. That the pursuer represents the whole creditors on the sequestrated estates of the said D. E., and who were creditors of the said D. E. at and prior to the date of the alienation, transference, and delivery of the goods aftermentioned.

4. That the pursuer finds, that on or about the day of , the bankrupt alienated, transferred, and delivered to the defender 250 chests of tea in satisfaction or further security of a debt due to him by the bankrupt, and that as a preference to him over the other just and lawful creditors of the bankrupt, and to their prejudice.

5. That the said alienation, transference, and delivery took place on or after the said D. E.'s notour bankruptcy, which occurred on the day of , or at least within sixty days prior thereto.

Note of Pleas in Law.

1. The said alienation being within sixty days prior to notour bankruptcy, and granted by the bankrupt to the defender in satisfaction or further security of a debt in preference to other creditors, is liable to be set aside.

2. In terms of the Act 1696, c. 5, and the Bankruptcy (Scotland) Act, 1856, and other Acts explaining and amending the same, the pursuer is entitled to decree as craved, with expenses.

M. N., No. Street, (Town),
Law Agent of the Pursuer.

No. III.

Extrajudicial Composition Contract.

(List of Creditors.)

Glasgow, 186 .

I, A. B., merchant in Glasgow, hereby offer to my whole just and lawful creditors a composition of five shillings per pound of their several debts, payable by two equal instalments at three and six months respectively from this date; and I, C. D., merchant in Glasgow, hereby become surety for the same.

A. B.
C. D.

Glasgow, 186 .

We, the subscribing creditors of A. B. above designed, do hereby accept of the above offer.

N.B.—*If it is meant to prevent the original debts from reviving,* it may be added "*and restrict our debts accordingly.*" It may also be added "*but on the condition that all* (*or nine-tenths in value of*) *the creditors concur, and that within fourteen days from this date,*" or the like.

No. IV.

Trust-Deed.

I, A. B., merchant, Glasgow, considering that my affairs have become embarrassed, and that I am owing money to sundry persons which I am at present unable to pay, and with a view to the speedy realisation and distribution of my estates among all my just and lawful creditors, I have resolved to grant these presents in manner after-written. Therefore I do hereby assign and dispone to and in favour of C. D., accountant in Glasgow, as trustee for the purposes hereinafter mentioned, All and Whole my heritable and moveable and real and personal estates and property of every description, and without prejudice to the above generality All and Whole [*here may be inserted description of any heritage to be conveyed, or, if not, the title may be made up by notarial instrument*]. And I bind myself, when required, to grant whatever special or more formal conveyances may be necessary for vesting the estates hereby conveyed in the person of the said trustee. But declaring that these presents are granted by me in trust for behoof of all who are my just and lawful creditors at the date hereof, and who shall duly lodge their claims to be ranked on the funds of the estate within the period and in the manner hereinafter mentioned; declaring farther, that in the execution of these presents, the trustee is and shall be invested with the powers and subjected to the duties hereinafter prescribed—viz.: *First*, The trustee shall, immediately on delivery hereof, complete his title to the estates hereby conveyed in such manner as is necessary by law to give him a preferable right thereto, and also recover, enter into, and take possession of my said estates, and also uplift and discharge all debts and sums of money due to me; with all the powers necessary for the recovery of my said estates, and in particular with power to said trustee to compound, transact, and agree, and submit and refer to arbitration all doubtful claims and questions, and also to sue and defend all actions necessary or expedient for the recovery or protection of the estate; declaring that the discharge of the said trustee shall be a sufficient acquittance to the parties paying money to him belonging to me, and that the parties so paying it shall have no concern with the application of the same. *Secondly*, The trustee, on recovering and taking possession of said estates, shall manage the same either by himself or by

factors or others, and where necessary may continue and carry on any business, and also execute and complete any of my existing contracts or works; and in all cases the trustee shall with every convenient speed sell, realise, and convert my estates into cash, and with power to him to sell said estates by public roup or private bargain, and to grant all necessary deeds for that purpose, but in the case of a sale by private bargain he shall do so only with consent of the committee after named, and he shall regularly lodge the proceeds of the estate in any joint-stock bank of issue in Scotland in his own name as trustee foresaid. *Thirdly*, The trustee shall, on acceptance hereof, insert a notice in two newspapers in the county of , calling on the said creditors to lodge with him their respective claims and vouchers of debt within one month from the date of the notice, and shall, if he deem it requisite, call upon the creditors, or any of them, to lodge declarations of verity to their said debts, with certification that should they fail to do so, or to lodge their claims and vouchers as aforesaid, they shall forfeit all right to the first dividend out of the estate; and in the event of there being funds to pay a second or subsequent dividend, then the trustee shall advertise, in the same manner and under the like certification, prior to every such dividend. *Fourthly*, The trustee shall thereupon proceed to examine the claims and vouchers of the creditors, and shall admit or reject the same, and give written notice, within seven days thereafter, to each creditor whether he has so admitted or rejected the said creditor's claim; and the decision of the trustee on the said claims shall be final, so far as the first dividend is concerned, [unless any of the creditors or the said A. B. shall, within fourteen days from the date of the said notice, intimate to the trustee in writing, an intention to have the said decision brought under the review of the arbiter hereinafter appointed;] providing, that where there are sufficient funds recovered to enable the trustee to make a second or any subsequent dividend, then the same proceedings shall be gone through with regard to such dividend as is provided with regard to the first dividend—it being understood that creditors who are too late for participating in any dividend shall, in claiming with a view to a subsequent dividend, be entitled to an equalising dividend to the effect of drawing out of the second or any subsequent dividend what they would have drawn if they had been in time to claim a ranking in a prior dividend. *Fifthly*, The trustee shall, every three months from the date of acceptance of this trust, submit an account of his intromissions with the funds of the estate to the said committee, who shall audit,

and, if found correct, approve of and docquet the same; and when the estate is realised, the trustee shall forthwith proceed to make up a scheme of division of the proceeds among the creditors according to their several rights and interests, and shall pay to the creditors their dividends accordingly, but without prejudice to the trustee making one or more dividends if he finds it expedient to do so. *Sixthly*, The trustee shall apply the proceeds of the estate, *in the first place*, in payment of any advances which he may have made, or expenses he may have incurred, in the management and realisation of the estate, including a reasonable remuneration to himself; *in the second place*, in payment of claims legally preferable against the estate; *in the third place*, in payment rateably of the ordinary debts of the estate; and should any balance remain after these payments, the trustee and his heirs and executors shall be bound to hold just count and reckoning with me therefor, and pay or convey the same to me or my heirs and assignees. *Seventhly*, And in order to a more efficient management of the estate, I do hereby, at the request of a meeting of my creditors, held on the day of , appoint G. H., I. J., and K. L., merchants in Glasgow, all creditors of me the said A. B., and the survivors and survivor of them (the major number being a quorum), as a committee of my creditors, to advise with the trustee in the recovery, realisation, and management of the estate, and to audit and settle the trustee's accounts from time to time, and to fix the remuneration of the trustee; with power to the members of the said committee to resign should they see fit; and also with power to the remaining members of said committee, from time to time to appoint others of my creditors to act in place of the members who may decline to act, or who may resign or die; but declaring that the death, resignation, or ceasing to act of all or any of the members of the said committee shall be no bar to the trustee proceeding in the execution of the trust; also declaring that although the trustee does not consult the said committee, or the committee decline or fail to advise him in any matter connected with the trust, it shall be no bar to his acting, and shall not impair his powers under this deed of trust, but shall only affect his personal responsibility in so far as to make him liable, *culpa levissima*, where he fails or declines to consult the said committee; and declaring that the committee shall not in any case be required to consent to any step of procedure on the part of the trustee, except to a sale of the estate by private bargain. [*Eighthly*, Further, in order to avoid litigation under this trust, it is hereby provided and declared, that L. M., Dean of the Faculty of Procurators in N., shall be,

and is hereby nominated arbiter, with full power to settle and determine all disputes between the trustee and creditors, and between the trustee and the committee, and among the creditors themselves, and also between me and the trustee or any of the creditors, whether the same have reference to the management or realisation or distribution of the estate, or to the admission or rejection of the claims of creditors, or to the suspension of diligence against me, or to my discharge, or to any other matter under the trust, with all the usual powers competent to arbiters in such cases: and in particular, with power to him to determine all matters of ranking where the decision of the trustee is objected to by any party having interest, and to find that I am entitled to a suspension of diligence at the instance of any of the creditors, and to a discharge of all my debts, and to pronounce an award and decree-arbitral accordingly: And it is declared that all of my creditors who have in writing acceded to this trust, or who shall receive or claim a ranking on the estate, shall be held as consenting to the above clause of arbitration as fully and effectually as if they had subscribed these presents; and I assign the writs, and oblige myself to deliver up the same whenever required; and I grant warrandice, and I consent to registration hereof, and of any decree-arbitral to be pronounced by said arbiter under the above reference, for preservation and execution, and also to registration in the General or Particular Register of Sasines, but in trust always for the uses, ends, and purposes, with the powers and under the provisions and declarations before written. In witness whereof.

N.B.—*There may be inserted in the deeds various other clauses* —e.g., *nominating a succession of trustees—giving power to the creditors to appoint a trustee in succession—making the trust conditional on accession by all the creditors, and that within a limited time—making it conditional on acceptance by the trustee named—or stipulating for a supersedere of diligence, and perhaps for an absolute discharge. The accession may be indorsed on the trust-deed thus:* "We, the undersigned, named and designed in the testing clause hereof, all creditors of the within designed A. B., do hereby accede to the within trust-deed in all its terms. In witness whereof," &c. *If letters of horning are wished, then a clause of registration may be inserted.*

No. V.

Petition for Cessio.

(*Vide* Act of Sederunt, 6th June 1839, and Sheriff Court Act, 1876, s. 26.)

In the Sheriff Court of shire, at

A. B., grocer in C., (*a*) pursuer,

Against

D. E., draper in F. (*give a list of all the creditors*), all real or pretended creditors of A. B., above designed, defenders.

The above-named pursuer submits to the Court the condescendence and note of pleas in law hereto annexed, and prays the Court

To grant at once interim protection to the pursuer against imprisonment for civil debt, on his finding caution for such amount as the Sheriff may deem reasonable for his appearance at all diets of the process; (*b*) thereafter, on resuming consideration of this petition, and advising the whole cause, to find that the pursuer is entitled to the benefit of the process of *cessio bonorum*, and to grant decree accordingly; and to appoint a suitable person to be trustee, who shall take the management and disposal of his estate for the general behoof of his creditors: All under and in terms of the Act 6 & 7 Will. IV. c. 56, and the Sheriff Courts (Scotland) Act, 1876.

Condescendence.

1. That the pursuer has been charged, and a warrant of imprisonment may follow on the charge, at the instance of D. E., above designed, against the pursuer, for not making payment of the sum of £ contained in a (*c*).

2. That the pursuer is insolvent and unable to pay his debts, and is ready to surrender his whole means and estates for behoof of his creditors. That his inability to pay his debts has not been occasioned by fraud, but has arisen solely from misfortunes and losses, to be particularly specified in the state of his affairs, subscribed by himself, and to be produced in the hands of the Clerk of Court.

3. That there is herewith produced the schedule of charge served on the pursuer to pay the above-specified debt due to the said D. E.

4. That the pursuer is desirous to obtain a warrant of interim protection (*d*) against the execution of diligence, and is ready to find sufficient caution in terms of the Statute 39 & 40 Vict. c. 70, s. 26, to the amount of £ , for which O. P., commission agent in R., will become his cautioner.

Note of Pleas in Law.

1. That in terms of the Cessio Act 6 & 7 Will. c. 56, Act of Sederunt, 6th June 1839, and the Sheriff Courts (Scotland) Act, 1875, the pursuer is entitled to the prayer of his petition.

2. In the event of opposition the pursuer is entitled to expenses.

M. N., No Street (Place),
Law Agent of the Pursuer.

VARIATIONS WHERE LIBERATION WANTED.

(*a*) Insert *Presently incarcerated in the prison of M.*

(*b*) Insert *Also to grant warrant for his interim liberation from prison after forty-eight hours' notice to R. S., draper in T., at whose instance the pursuer is incarcerated as aftermentioned, or to the said R. S.'s known agent; and on caution being found for such amount as the Sheriff may deem reasonable for the pursuer's appearance at all diets of the process, and binding the cautioner to present the pursuer at the prison for reincarceration should the cessio be refused, or the interim warrant recalled.*

(*c*) In place of this article insert *That the pursuer is in prison in respect of a civil debt amounting to* £ , *at the instance of* (specifying the debt and the particular circumstances of its constitution by bill, decree, or otherwise.)

(*d*) Insert *Or liberation.*

No. VI.

Petition for Participation in the Proceeds of a Poinding and Sale.[1]

(*Vide* Act 1856, s. 12.)

In the Sheriff Court of shire, at ,
A. B., (*designation*) pursuer,
Against
C. D., (*designation*) defender.

The above-named pursuer submits to the Court the condescendence and note of pleas in law hereto annexed, and prays the Court

To ordain the defender to hold just count and reckoning with the pursuer for the free proceeds of a sale of certain effects belonging to I. J., merchant in G., which effects were poinded on or about the day of , and the sale of which was carried through by the defender on or about the day of by virtue of a warrant at his instance, and for payment of an alleged debt amounting to £ : and to grant a decree against the

[1] The form of procedure, however, for obtaining a share of the proceeds which is to be recommended, is by lodging a claim in the process or raising a multiplepoinding.

defender ordaining him to pay to the pursuer the sum of £ , being the proportionate share of the free proceeds of the effects so poinded and sold effeiring to a debt due to the pursuer by the said I. J., amounting to £ , contained in a bill drawn by the pursuer upon and accepted by the said I. J., dated the day of , payable two months after date, and upon which there followed an extract registered protest and decree from the Sheriff Court Books of L., dated the of , at least to pay the pursuer such sum as may be found to be a proportionate share of the free proceeds of said poinded effects, corresponding to the amount of the pursuer's debt as aforesaid.

Condescendence.

1. That by virtue of diligence raised at the instance of the defender upon a debt amounting to £ owing to him by I. J. (*designation*), the defender caused a poinding to be executed on or about the day of of certain effects belonging to the said I. J.

2. That upon a warrant obtained at his instance under said diligence, the defender carried through a sale of said effects on or about the day of , and the proceeds of said sale uplifted by and lying in the hands of the defender amounts to the sum of £ after deducting the expenses of recovering the same.

3. That the pursuer is also a creditor of the said I. J. for the sum of £ contained in a bill drawn by the pursuer upon and accepted by the said I. J., dated the day of , and payable two months after date; and upon which there has followed an extract registered protest and decree, from the Sheriff Court Books of L.shire, dated the day of , and herewith produced.

4. That the said I. J. is insolvent, and was rendered notour bankrupt in terms of the Act 1696, c. 5, and the Bankruptcy (Scotland) Act, 1856, upon the day of ; at least within sixty days before said poinding at the defender's instance was completed, or at least within four calendar months thereafter, as instructed by the extract registered protest, and fiat thereon, and by execution of search under the hands of R. S., sheriff officer in G., dated the day of , herewith produced.

Note of Pleas in Law.

1. The said I. J. having been rendered notour bankrupt within four months after the poinding in question, the defen-

der is bound to account for the proceeds to other creditors thereby legally entitled to participate therein.

2. That in terms of the Statute 1696, c. 5, and the Bankruptcy (Scotland) Act, 1856, the pursuer is entitled to decree as craved.

M. N. No. Street (Town),
Law Agent of the Pursuer.

No. VII.

Mandates by Debtors to apply for Sequestration.

[*Place and date.*]

To S. T., Esq. [*designation*].

Sir,—I, A. B., merchant in C., authorise you to apply for sequestration of my estates under the Bankrupt Statutes.—I am, Sir, your obedient servant, A. B.

Or,

[*Place and date.*]

To S. T., Esq. [*designation*].

Sir,—We, A. B. and Company, merchants in C., as a company, and D. E. and F. G., both merchants in C., the sole partners thereof, and as individuals, authorise you to apply for sequestration of our several estates under the Bankrupt Statutes.

A. B. & Co.
A. B.
C. D.

No. VIII.

Petition by Creditor for Appointment of Judicial Factor, and Deliverance thereon.

(*Vide* Act 1856, s. 16.)

Unto the Honourable the Lord Ordinary officiating on the Bills [*or* the Sheriff of the county of Lanark], the petition of A. B., merchant in Glasgow.

The petitioner, A. B.,

Humbly showeth,—That on the day of the petitioner presented an application to your Lordship for sequestration of the estates of D. E., merchant in Glasgow, in terms of the "Bankruptcy (Scotland) Act, 1856," and Acts explaining and amending the same [which petition is now depending *or*], and after the usual citation and the induciæ having expired, and no opposition being offered to the petition, your Lordship, by a deliverance, of date the day of ,

awarded sequestration of the estates of the said D. E., and declared the same to belong to his creditors for the purposes of said Statutes, conform to certified copy of the petition and deliverance herewith produced [*or otherwise, as the case may be*].

That the petitioner is a creditor of the said D. E., to the extent of £80 sterling, conform to oath and bill herewith produced.

That a portion of the said sequestrated estates consists of [*here describe them*], and, as the said stock is of a perishable description, the petitioner makes the present application to your Lordship for the appointment of a judicial factor.

May it therefore please your Lordship, on considering this petition, to appoint a judicial factor on the said sequestrated estates, with the powers necessary for the preservation of the estates, including the power to recover debts, all in terms of s. 16 of the Statute first above mentioned.

According to justice.

Deliverance thereon.

[*Place and date.*]—Having considered the foregoing petition, appoints C. D., accountant in Glasgow, as judicial factor on the [sequestrated] estates of A. B., merchant in Glasgow, in terms of the "Bankruptcy (Scotland) Act, 1856," s. 16, with the powers necessary for the preservation of the estate, including the power to recover debts, until a trustee be confirmed on the said estates [*or where sequestration not awarded* until the petition for sequestration of said estates pending in this Court be dismissed;] appoints him to find caution for his intromissions, and the proper discharge of his duties, to the extent of £ sterling, and prohibits the Clerk of Court from issuing a certificate of this appointment until such caution shall be found to his satisfaction.

No. IX.

Form of a Bond of Caution for Judicial Factor where Sequestration has been awarded.

I, A. B., accountant in Glasgow, having been appointed judicial factor on the sequestrated estate of C. D., merchant in Glasgow, and I, E. F., merchant in Glasgow, as cautioner, surety, and full debtor for and with the said A. B., hereby bind and oblige ourselves, conjunctly and severally, our heirs

and executors, that I, the said A. B., shall faithfully discharge all the duties which attach to the said office of judicial factor, and fully account for my whole intromissions with the said estate, and make payment of any balance due by me to the creditors on the said estate, or trustee elected by them to succeed me; declaring that this bond shall not in any way be affected, nor shall I, the said E. F., be liberated by any omission, negligence, or want of diligence on the part of the creditors, or trustee, or commissioners on the said estate; and declaring, further, that this bond, so far as concerns me, the said E. F., shall not bind me or my foresaids to a greater extent than the sum of sterling, to which my obligation, before written, is hereby limited: And we consent to the registration hereof in the Books of Council and Session, or others competent, therein to remain for preservation; and that letters of horning on six days' charge, and all other legal execution necessary, may pass hereon in common form as effeirs, and thereto constitute procurators, &c. In witness whereof, this bond (so far as not printed) written and filled up by

No. X.

Form of Bond where Sequestration has not been awarded.

I, A. B., accountant in Glasgow, considering that an application has been presented to the Sheriff of Lanarkshire, at the instance of C. D., merchant in Glasgow, for sequestration under the Bankruptcy Statutes of the estates of E. F., merchant there, and also that an application has been presented to the said Sheriff, at said instance, for the appointment of a judicial factor on said estates in terms of said Statutes, and seeing that I have been appointed to said office of judicial factor on said estates, until a trustee shall be appointed thereon if the said estates shall be sequestrated, or until the said petition for sequestration shall be dismissed, with all the powers necessary for the interim preservation of the said estates, including the power to recover debts. Therefore I, the said A. B., as principal, and I, G. H., merchant, Glasgow, as cautioner, surety, and full debtor for and with the said A. B., hereby bind and oblige ourselves, conjunctly and severally, our heirs and executors, that I, the said A. B., shall faithfully discharge all the duties which by law, or by my said appointment, attach to the said office of judicial factor, and fully

account for my whole intromissions with the said estate, and make payment of any balance due by me to the creditors on the said estate, or trustee elected thereon should the said estates be sequestrated, or otherwise to the party or parties entitled thereto; declaring that this bond shall not in any way be affected, nor shall I, the said G. H., be liberated by any omission, negligence, or want of diligence on the part of the creditors, trustee, or commissioners on the said estates, or on the part of any other party; and declaring, further, that this bond, so far as concerns me, the said G. H., shall not bind me or my foresaids to a greater extent than the sum of pounds sterling, to which my obligation before written is hereby limited. And we consent to the registration hereof in the Books of Council and Session, or others competent, therein to remain for preservation, and that letters of horning on six days' charge, and all other legal execution necessary, may hereon pass in form as effeirs, and thereto constitute procurators, &c.
In witness whereof, this bond, written, &c.

No. XI.

Petition by Creditor for Warrant to lock up Premises, and Deliverance thereon.

(*Vide* Act 1856, s. 17.)

Unto the Honourable the Sheriff of the county of Lanark, the petition of A. B., merchant in Glasgow.

The petitioner, A. B.,

Humbly showeth,—That on the day of , your Lordship, in terms of the "Bankruptcy (Scotland) Act, 1856," and Acts explaining and amending the same, awarded sequestration of the estates of D. E., merchant in Glasgow, and declared the same to belong to his creditors for the purposes of said Statutes, conform to certified copy of the petition and deliverance herewith produced.

That the petitioner is a creditor of the said D. E., to the extent of £80 sterling, conform to oath and bill herewith produced.

That the said D. E. was refused personal protection by your Lordship, and in consequence of certain of the creditors having diligence ready for immediate execution against him, whereby he has been deterred from attending to his business,

or remaining in the management of his shop and warehouse, the petitioner considers it will be for the interest of his creditors, that steps be taken to have his books and papers put under safe custody, and his premises situated in Street, Glasgow, locked up till the appointment of a trustee on the sequestrated estate.

May it therefore please your Lordship, on considering this petition, to grant warrant to the Clerk of Court, or to any other person or persons that your Lordship may name, to proceed to the premises now or lately occupied by D. E., the bankrupt, in Street, Glasgow, and to seal up and put under safe custody the books and papers of the bankrupt, and to lock up his shop, warehouse, or other repositories, and to keep the keys thereof, till a trustee is elected and confirmed on the said sequestrated estate, all in terms of s. 17 of the Statute first above mentioned.

According to justice.

Deliverance thereon.

Glasgow, 1st Nov. 1856.—Having considered the foregoing petition and productions, grants warrant to V. W., assistant to the Clerk of Court, to proceed to the premises referred to in the petition, and seal up and put under safe custody the books and papers of the bankrupt, and lock up his shop, warehouse, or other repositories, and keep the keys thereof until a trustee is elected and confirmed, all as craved.

No. XII.

Petition for Sequestration by Debtor with concurrence of a Creditor, and Deliverance thereon, &c.

Division, November 1, 1856.

Unto the Honourable the Lord Ordinary officiating on the Bills [*or* the Sheriff of the county of Lanark], the petition of A. B., merchant in M. [*or* A. B. and Company,[1] merchants in M., and A. B. and D. E., the sole individual partners of that Company, or the only partners admitting themselves to be partners of that Company], with concurrence of F. G. [*or* F. G. and Company], merchant in M., a creditor of the said A. B., to the extent required by the Statute,

[1] Where any one carries on business under a company name, he should petition in that capacity—there being in reality no copartnery.

Humbly showeth,—That the petitioner [*if to the Sheriff, insert,* for the year preceding the date of this application, has carried on business at M., in the county of L., and] is subject to the jurisdiction of the Supreme Courts of Scotland.

That the petitioner, having become insolvent, is under the necessity of applying for sequestration of his estates, in terms of the "Bankruptcy (Scotland) Act, 1856," and Acts explaining and amending the same.

That the said F. G. [*or* F. G. and Company] is a creditor of the petitioner, to the extent of £80, conform to bill and oath herewith produced, and is thus duly qualified in terms of said Statutes to concur in this petition. [*A statement to warrant a prayer for liberation may be inserted. Vide* No. XXIX.]

May it therefore please your Lordship to award sequestration of the estates which now belong, or shall hereafter belong, to the petitioner [*or* the said A. B. and Company, and to the said A. B. and D. E., as partners of that company, and as individuals], before the date of his discharge, and to declare the said estates to belong to the creditors of the petitioner [*in the case of a Company,* to their respective creditors] for the purposes of said Statutes, and to appoint a meeting of the said creditors, to be held on the day of at o'clock noon, within the to elect a trustee [*in case of a Company, insert,* on the estates of the said Company and individual partners or separate trustees], or trustees in succession, and commissioners upon the said sequestrated estates, and do the other acts provided by the said Statutes [*where the Lord Ordinary, insert,* also to remit to the Sheriff of the county of L. to proceed in manner mentioned in said Statutes]: and to grant to the petitioner a warrant of protection against arrest or imprisonment for civil debt, until the said meeting of creditors for the election of trustee, and do otherwise. [*A prayer for liberation may also be inserted, or* No. XXIX. *may be used instead.*]

According to justice, &c.

Deliverance thereon.

[*Place and date.*]—The Lord Ordinary [*or* Sheriff-Substitute], having considered the foregoing petition, with the writs produced, sequestrates the estates which now belong, or shall hereafter belong, to the petitioner, A. B., merchant in M., [*or if a Company,* A. B. and Company, merchants in M., as a Company, and to A. B. and C. D., the individual partners of that Company, as partners thereof, and as individuals], before

the date of his [*or* their] discharge, and declares the same to belong to his creditors [*or* to their respective creditors] for the purposes of the "Bankruptcy (Scotland) Act, 1856," and Acts explaining and amending the same; appoints a meeting of the creditors to be held on the day of at o'clock , within to elect a trustee [*if a Company, insert,* on the estates of the said Company, and individual partners or separate trustees], or trustees in succession, on the said estates, and do the other acts provided by the said Statutes [*where by the Lord Ordinary,* remit to the Sheriff of the county of L. where the said meeting is to be held to proceed in manner mentioned in said Statutes], and grants a warrant of protection to the said A. B. [*or* A. B. and C. D.] against arrest or imprisonment for civil debt, until the meeting of the creditors for election of trustee. [*If liberation is prayed for, add:* Farther, appoints a copy of the said petition, and of this deliverance, to be served upon the within designed G. H., the incarcerating creditor, or his known agent; and appoints parties, or their procurators, to be heard on the craving for liberation before the Sheriff-Substitute in his Chambers here, on the day of at o'clock, with certification.]

Docquet for certified Copy.

What is contained upon this and the preceding pages is a true copy of the petition for sequestration of the estates of the before-designed A. B. and Company [*or* A. B. and C. D.], and individual partners, with concurrence therein mentioned, and of the deliverance pronounced thereon by

Bill Chamber
[*or* Sheriff Clerk's Office, Glasgow],
1st Nov. 1856.

No. XIII.

Petition for Sequestration by a Creditor without the Debtor's consent, and First Deliverance thereon.

(*Vide* Act 1856, s. 13, 15, and 18.)

Division. November 1, 1862.

Unto the Honourable the Lord Ordinary officiating on the Bills [*or* Sheriff of the county of L.], the petition of F. G. [*or* F. G. and Company], merchant in M., a creditor of A. B. [*or* A. B. and Company, merchants in M., and A. B. and D. E., individual partners of that Company], merchant in M., to the extent required by the Statute,

Humbly showeth,—That the petitioner is a creditor of A. B., above designed, to the extent of £80 sterling, conform to bill and oath herewith produced.

That the said A. B. has been rendered notour bankrupt within the last four months, and still remains in a state of notour bankruptcy, and has, within a year before the date of the presentation of this petition, resided or had a dwelling-house or place of business in Scotland, and is subject to the jurisdiction of the Supreme Courts of Scotland. [*In the case of a Company, say,* that the said A. B. and Company have been rendered notour bankrupt within the last four months, and still remain in a state of notour bankruptcy, and have, within a year before the date of the presentation of this petition, carried on business in Scotland; and A. B., partner of said Company, has resided or had a dwelling-house in Scotland within said period, and said Company and partners are subject to the jurisdiction of the Supreme Courts of Scotland.] [*If to the Sheriff, insert,* that the said A. B. [*or* A. B. and Company], for the year preceding the date of this petition, has resided [*or* carried on business] in Glasgow, in the county of Lanark.]

That, in order to realise the estates of the said A. B. for behoof of his creditors, the petitioner is under the necessity of applying to your Lordship for sequestration of his estates, in terms of the "Bankruptcy (Scotland) Act, 1856," and Acts explaining and amending the same.

May it therefore please your Lordship, on considering this petition, with the bill and oath produced, to grant warrant for citing the said A. B. [*or* A. B. and Company, and A. B. and D. E.], to appear before your Lordship on such induciæ as your Lordship may direct, to show cause why sequestration of his estates should not be awarded. Also to direct intimation of the said warrant, and of the diet of appearance on such induciæ, to be made in the 'Edinburgh Gazette;' and grant diligence to recover evidence of the notour bankruptcy of the said A. B. [*or* A. B. and Company and partners], or other facts necessary to be established. And on again considering this petition, to award sequestration, &c. [*as in the form of petition,* No. XII., *except prayer for protection.*]

First Deliverance thereon.

[*Place and date.*]—The Lord Ordinary [*or* Sheriff-Substitute], having considered this petition, with the writs pro-

duced, grants warrant to messengers-at-arms [*if by Sheriff*, to messengers-at-arms and officers of Court] to cite, in terms of the "Bankruptcy (Scotland) Act, 1856," the therein designed A. B. [*or* A. B. and Company, and A. B. and D. E.], to appear in Court on the seventh day next after citation if within Scotland, and on the twenty first day next after citation if furth of Scotland, to show cause why sequestration of his [*or* their] estates should not be awarded; and directs intimation of this warrant and of the diet of appearance to be made in the 'Edinburgh Gazette,' all in terms of said Statute. Farther, grants diligence against witnesses and havers to recover evidence of the notour bankruptcy of the said A. B., and of the other facts necessary to be established for obtaining the sequestration, and commission to the Judge Ordinary of the bounds [*or* any of the Depute Clerks of Court] to take the depositions of the witnesses and havers, and to be reported *quam primum.*

No. XIV.

Minute for Sequestration after Citation and Advertisement.

Minute for E. G. [*or* E. G. and Company], merchant in L.; in the petition at his instance for sequestration of the estates of A. B., merchant in L.

Nov. 1856. That in terms of your Lordship's warrant, of this date, the said A. B. was duly cited to appear within the period specified in said warrant, to show cause why sequestration should not be awarded conform to execution of citation herewith produced.

That, farther, the petitioner, in terms of your Lordship's warrant, inserted a notice in the 'Edinburgh Gazette,' of date the 2d day of November 1856, intimating the said warrant and the diet of appearance, as shown by copy of the Gazette herewith produced.

That, lastly, the petitioner has, in terms of your Lordship's warrant, recovered evidence of the notour bankruptcy of the said A. B., and of the other requisites for the sequestration of his estates, all of which are herewith produced.

That no appearance having been made by the said A. B., the petitioner respectfully craves your Lordship to pronounce a deliverance in terms of the prayer of the original petition.

In respect whereof.

N.B.—*A minute is not generally used in the Sheriff Court.*

No. XV.

Gazette Notice under Application by Creditor for Sequestration without Debtor's consent.

(*Vide* s. 28.)

Notice.

A petition having been presented to the Lord Ordinary officiating on the Bills [*or* Sheriff of Lanarkshire] at the instance of A. B., merchant in Glasgow, for sequestration of the estates of C. D., merchant in Glasgow, his Lordship, of this date, granted warrant for citing the said C. D. to appear in Court on the seventh day next after citation if within Scotland, and on the twenty-first day next after citation if furth of Scotland, to show cause why sequestration should not be awarded. Of all which intimation is hereby given.

M. N., *Agent.*
[*Specify place of business.*]

[*Place and date.*]

No. XVI.

Second Deliverance thereon.

[*Place and date.*]—The Lord Ordinary [*or* Sheriff-Substitute] having resumed consideration of the foregoing petition with the writs therewith produced, together with the foregoing execution of citation, and 'Edinburgh Gazette' now produced containing the intimation ordered by the previous interlocutor, and having seen the petitioner's reported proof and productions therewith made, instructing the notour bankruptcy of A. B. [*or* A. B. and Company] above designed, and the other facts necessary to be established for obtaining the sequestration, all as averred in said petition, and no appearance having been made to oppose the prayer of the petition, sequestrates [*as in No. XII., except warrant of protection*].

No. XVII.

Petition for Sequestration of a deceased Debtor's Estates at the instance of a Mandatory.

Unto the Honourable the Lord Ordinary officiating on the Bills [*or* Sheriff of the county of L.], the petition of A. B., merchant in Glasgow, mandatory of the deceased C. D., merchant in Glasgow, conform to mandate produced, Division November 1, 1862.

Humbly showeth,—That the said C. D., now deceased, was, at the time of his death, which happened on the day of last, subject to the jurisdiction of the Supreme Courts of Scotland. [*If to the Sheriff, insert,* That the said C. D. for the year preceding his death resided [*or* carried on business] at Glasgow, in the county of Lanark.]

That, in order to wind up his affairs, the said C. D. granted a mandate to the petitioner to apply for sequestration of his estates, in terms of the "Bankruptcy (Scotland) Act, 1856," and Acts explaining and amending the same, which mandate is herewith produced and founded on.

That, in conformity with said mandate, the petitioner makes this application to your Lordship for sequestration under the said Statutes.

May it therefore please your Lordship, on considering this petition, with the mandate produced, to award sequestration of the estates of the said deceased A. B., belonging to him at the time of his death, and to declare the same to belong to his creditors, for the purposes of said Statutes, and to appoint a meeting of the said creditors, to be held on the day of at o'clock noon, within the to elect a trustee, or trustees in succession, upon the said C. D.'s sequestrated estates, and do the other acts provided by the said Statutes [*where to the Lord Ordinary, add,* Farther, to remit the process of sequestration to the Sheriff of the county of Lanark, to proceed therein, all in terms of said Statutes]; and do otherwise.

According to justice.

Deliverance thereon.

(Same as No. XII., except warrant of protection.)

No. XVIII.

Petition for Sequestration of a deceased Debtor's Estates, at the instance of a Creditor, and Deliverance thereon.

Division, November 1, 1856.

Unto the Honourable the Lord Ordinary officiating on the Bills [*or* Sheriff of the county of L.], the petition of F. G. [*or* F. G. and Company], merchant in Glasgow, a creditor of the deceased A. B., merchant in Glasgow, to the extent required by the Statute,

Humbly showeth,—That A. B., above designed, was, at the time of his death, which happened on the day of last, subject to the jurisdiction of the Supreme Courts of Scotland.

[*If to the Sheriff, insert,* That the said A. B., for the year preceding his death, resided [*or* carried on business] at Glasgow, in the county of Lanark.]

That the petitioner was a creditor of the said A. B. at the time of his death to the extent of £80 sterling, and the said debt is still resting-owing to the petitioner, conform to bill and oath herewith produced.

That M. N., merchant in Glasgow, is the only child and successor of the said A. B.

[*If sequestration is to be forthwith awarded, add as follows:* That the said A. B. was, at the time of his death, notour bankrupt; *or,* That M. N., merchant in Glasgow, only child and successor of the said A. B., concurs in this petition; *or,* That M. N., merchant in Glasgow, only child and successor of the said A. B., renounces the succession of the said A. B.]

That, at the time of his death, the said A. B. resided [*or* had a dwelling house, *or* carried on business] in Glasgow, and was then owner of estates in Scotland, all as deponed to in the oath accompanying this petition.

That, in order to realise the estates of the said A. B. for behoof of his creditors, the petitioner is under the necessity of applying to your Lordship for sequestration of his estates, in terms of the "Bankruptcy (Scotland Act, 1856," and Acts explaining and amending the same.

May it therefore please your Lordship, on considering this petition, with the bill and oath produced, to grant warrant for citing the said M. N. to appear before your Lordship, on such induciæ as your Lordship may direct, to show cause why sequestration of the estates of the said A. B., now deceased, should not be awarded; also to direct intimation of the said warrant, and of the diet of appearance to be fixed by your Lordship, to be made in the 'Edinburgh Gazette.' [*Where the successor concurs or renounces, the above is unnecessary; and in place of citation, &c., say,* and in respect of the concurrence of the said M. N., to award sequestration, &c. *Where notour bankruptcy, however, is averred, insert,* and to grant diligence to recover evidence of the notour bankruptcy of the said A. B., or other facts necessary to be established.] And on again considering this petition, to award sequestration, &c. [*as in form of*

petition No. XI., except warrant of protection, and with this addition: Farther, to ordain the said M. N., or any successor who has made up a title to, or is in possession of, the said deceased's property, to convey the same, so far as liable for the debts of the said deceased, to the trustee to be appointed under the said sequestration.]

Deliverance thereon.

[*Place and date.*]—The Lord Ordinary [*or* Sheriff-Substitute] having considered this petition, with writs produced, grants warrant to messengers-at-arms [*if by Sheriff*, to messengers-at-arms and officers of Court] to cite, in terms of the "Bankruptcy (Scotland) Act, 1856," M. N. above designed to appear in Court on the seventh day next after citation if within Scotland, and on the twenty-first day next after citation if furth of Scotland, to show cause why sequestration of the estates of the deceased A. B. should not be awarded: Farther, directs intimation of this warrant and of the diet of appearance to be made in the 'Edinburgh Gazette,' all in terms of the Statutes. [If a diligence to be granted, *vide* No. XIII.]

No. XIX.

Gazette Notice and Minute for Sequestration after Citation and Advertisement.

(Same as Nos. XIV. and XV.)

Deliverance thereon.

[*Place and date.*]—The Lord Ordinary [*or* Sheriff-Substitute] having resumed consideration of this petition, with the writs produced, together with a minute now given in for the petitioner, executions of service, 'Edinburgh Gazette,' and other productions made therewith, and no appearance having been made for the successors of the deceased A. B., after designed, or for any other party, sequestrates the estates of A. B., merchant in Glasgow, now deceased, in terms of the "Bankruptcy (Scotland) Act, 1856," and Acts explaining and amending the same, and declares the said estates to belong to his creditors, for the purposes of the said Statutes; ordains the within designed [*the successors named in the application*], or any successor who has made up a title to, or is in possession of, any part of

the said deceased's property, to convey the same, so far as liable for the debts of the said deceased, to the trustee to be appointed under this sequestration; and appoints the creditors to hold a meeting on the day of , at o'clock, within the , to elect a trustee or trustees in succession, on the estates of the said deceased A. B., and do the other acts provided by said Statutes. [*If by Lord Ordinary, add,* remits to the Sheriff of the County of L., where the said meeting is to be held, to proceed in manner mentioned in said Statutes.]

No. XX.

Oath by Petitioning or Concurring Creditor.

At A., the day of eighteen hundred and years, in presence of B. C., Esq., Judge Ordinary or Magistrate of Glasgow [*or* one of her Majesty's Justices of the Peace for the county of Lanark]: Compeared, E. F., merchant in Glasgow, who, being solemnly sworn and examined, depones, that H. I., manufacturer in K., is [*if a Company, say,* H. I. and Company, manufacturers in K., and H. I. and V. W., the individual partners of that company; *if debtor dead, say,* was at the time of his death] truly indebted and owing to the said E. F., the sum of one hundred pounds sterling, for goods, per account produced [*or,* being the contents of a bill drawn by the said E. F. upon, and accepted by, the said H. I., of date the day of , and payable three months after date, herewith produced]: Depones, that no part of said sum has been paid or compensated, and that the said E. F. holds no other person than the said H. I. [*or,* H. I. and Company, and individual partners] bound for the debt, and no security for the same. [*If there be co-obligants or securities held for the debt, then instead of the lines following the word* "compensated," *say,* Depones, that E. F., besides the said H. I., holds M. N. liable for said debt, as also the security of a right of pledge for said debt over a quantity of goods placed in the deponent's custody, by the said H. I., on the 20th of May last: But depones, that the said E. F. holds no other obligants or securities for said debt than those now specified. *Where the petition is presented during the life of the debtor, but without his consent, and the petitioning creditor shall found upon his debtor's bankruptcy in respect of his retiring within the Sanctuary, then the following deposition shall be made either in the above oath or in a separate oath:* Depones, that the said E. F.,

believes the said H. I. to have retreated to the Sanctuary, *or, as the case may be,* Depones, that the said E. F. believes the said H. I. to have retired to the Sanctuary for twenty-four hours. *Where the debtor is dead, the petitioning creditor shall, in the above oath, or in a separate oath, make the following deposition:* Depones, that the said H. I., at the time of his death, resided in , *or* had a dwelling-house in , *or* carried on business in , and was then the owner of estates in Scotland.] All which is truth, as the deponent shall answer to God.

B. C., *J. P.* E. F.

No. XXI.

Oath for Voting.

At A., the day of eighteen hundred and years, in presence of B. C., Esquire, Judge Ordinary or Magistrate of Glasgow [*or* one of her Majesty's Justices of the Peace for the county of Lanark]: Compeared E. F., merchant in Glasgow, who, being solemnly sworn and examined, depones, that H. I., manufacturer in K., was [*if a company, say,* H. I. and Company, manufacturers in Glasgow, and H. I. and V. W., the individual partners of that company;* *if debtor dead, say,* was at the time of his death] at the date of the sequestration of his estates, and still is, truly indebted and owing to the said E. F. the sum of one hundred pounds sterling, for goods, per account produced [*or,* being the contents of a bill drawn by the said E. F. upon, and accepted by, the said H. I., of date the day of , and payable three months after date, herewith produced]: Depones, that no part of said sum has been paid or compensated, and that the said E. F. holds no other person than the said H. I. [*or* H. I. and Company, and individual partners] bound for the debt, and no security for the same. [*If the creditor hold a security over any part of the bankrupt's estate, then instead of the lines following the word* "compensated," *say,* Depones, that the said E. F. holds the security of a right of pledge for said debt over a quantity of goods placed in the said E. F.'s custody, by the said H. I., on the 20th of May last, which security the said E. F. values at the sum of twenty pounds, and which value

* N.B.—*It is sometimes of importance to specify the debt as one due by the partners as well as by the company, and also to value in terms of s.* 61, *so as to prevent some single creditor, who has taken that precaution, from carrying off the trusteeship of the partner's estate by surprise.*

being deducted from the amount of the debt, leaves a balance of eighty pounds sterling due to the said E. F. by the said H. I. *If the creditor hold any co-obligants liable in relief to the bankrupt he may depone as follows:* Depones, that the said E. F., besides the said H. I., holds M. N. liable for said debt, and in respect the said M. N. is liable in relief to the said H. I., the said E. F. hereby values the obligation of the said M. N. at the sum of twenty pounds sterling, and which value being deducted from the amount of the debt, leaves a balance of eighty pounds sterling due to the said E. F. by the said H. I. *In the same way, the creditor must value and deduct any security he holds from an obligant liable in relief to the bankrupt, or any security from which the bankrupt has a right of relief. If the creditor means to vote on the estate of a partner, he may depone as follows:* Farther, the said E. F. values his claim against the estate of the said H. I. and Company at the sum of twenty pounds sterling, and in respect the said V. W. is bound to relieve his co-partner, H. I., to the extent of one-half of the company debts, the said E. F. hereby values his claim against the said V. W. at the sum of ten pounds sterling, which two sums of twenty pounds and ten pounds being deducted from said debt, leaves a balance of seventy pounds sterling, for which the said E. F. claims to vote upon the estate of the said H. I. *Where it is a contingent debt, or an annuity, the creditor, after the words* "solemnly sworn and examined," *may depone as follows:* Depones, that by bond of annuity, of date the day of , H. I., merchant in Glasgow, for the causes and considerations therein set forth, bound and obliged himself, his heirs and successors whomsoever, to pay to the said E. F. during all the days of his life, a free liferent annuity of thirty pounds sterling yearly, at two terms in the year, Whitsunday and Martinmas, by equal portions, beginning the first payment thereof as at the term of Whitsunday 1856 for the half-year following, and so forth, yearly, termly, and proportionally thereafter in advance, during the life of the said E. F., with a fifth part more of liquidate penalty in case of failure in punctual payment, and the legal interest of the said annuity from and after the respective terms at which the same should fall due, and in time coming during the not payment thereof, all conform to said bond of annuity, itself herewith produced: Depones, that no part of said annuity has been paid or compensated since the payment of the half-year's annuity which fell due at Whitsunday last, and that the said annuity is truly due and owing to the said E. F. by the said H. I., from the said term of Whitsunday last, so long as the said annuity has yet to run: Depones, that the said E. F. holds no other person than the said H. I. bound for

the debt, and no security for the same. That the estates of the said H. I. having been sequestrated under the "Bankruptcy (Scotland) Act, 1856," upon the day of , the said E. F. claims to vote and to be ranked for a dividend on the said estate in virtue of his said debt above specified. And in respect that, by s. 54 of said Statute, the said E. F. is not entitled so to vote and to be ranked on said estate until said annuity has been valued, the said E. F. hereby requires M. N., merchant in Glasgow, the trustee on said sequestrated estate, to put a value on the above specified annuity, in terms of the said Statute, to the effect that the said E. F. may vote and draw dividends as a creditor on the said H. I.'s sequestrated estate.] All which is truth, as the deponent shall answer to God.

B. C., *J. P.* E. F.

Mandate for Voting.

Glasgow, Nov. 1, 1856.

To S. T., Esq., accountant, Glasgow.

Sir,—I authorise you to act and vote as my mandatory in the sequestration of A. B., merchant in Glasgow.—I am, Sir, your obedient servant, D. E.

No. XXII.

Oath for Ranking.

At A., the day of eighteen hundred and years, in presence of B. C., Esquire, Judge Ordinary or Magistrate of Glasgow [*or* one of her Majesty's Justices of the Peace for the county of Lanark]: Compeared E. F., merchant in Glasgow, who, being solemnly sworn and examined, depones, that H. I., manufacturer in Glasgow, was [*if a company, say,* H. I. and Company, manufacturers in Glasgow, and H. I. and Y. W., the individual partners of that company; *if debtor dead, say,* was, at the time of his death, indebted, &c.] at the date of the sequestration of his estates, and still is, truly indebted and owing to the said E. F. the sum of one hundred pounds sterling, for goods, per account produced [*or,* being the contents of a bill drawn by the said E. F. upon, and accepted by, the said H. I., of date the day of and payable three months after date, herewith produced]: Depones, that no part of said sum has been paid or compensated, and that the said E. F. holds no other person than the

said H. I. [*or* H. I. and Company, and individual partners] bound for the debt, and no security for the same. [*If the creditor holds a security over any part of the bankrupt's estate, then instead of the lines following the word* "compensated," *say,* Depones, that the said E. F. holds the security of a right of pledge for said debt over a quantity of books placed in the said E. F.'s custody, by the said H. I., on the 20th of May last, which security the said E. F. values at the sum of twenty pounds, and which value being deducted from the amount of the debt, leaves a balance of eighty pounds sterling due to the said E. F. by the said H. I. *If the creditor means to vote on the estate of a partner, he may depone as follows:* Farther, the said E. F. values his claim against the estate of the said H. I. and Company at the sum of twenty pounds sterling, which, being deducted from said debt, leaves a balance of eighty pounds sterling, for which the said E. F. claims to rank upon the estate of the said H. I. *If the creditor means to claim a preference over any particular fund, he may, after the words* "and no security for the same," *make the following deposition:* except as after-mentioned: Depones, that on the 20th day of May last, the deponent raised diligence upon his said bill, and on said date executed an arrestment against the said H. I., in the hands of the Union Bank of Scotland, whereby the sum of one hundred pounds of money due and owing to the bankrupt was legally attached in security and for payment of the contents of said bill. And in respect that the said fund so arrested has been uplifted by the trustee in said sequestration, in terms of the Statute, the said E. F., in virtue of his said arrestment, hereby claims to be preferred *primo loco* to the said fund, and that to the effect of receiving full payment therefrom of the debt above deponed to. *If the creditor has omitted to lodge his claim in time to share in the first dividend, he, in order to claim an equalising dividend, may make the following deposition:* Depones, that the said E. F., having failed to produce his oath and grounds of debt timeously, did not receive payment of the first dividend declared in this estate; but, in terms of the Statute, he now claims out of the first funds of the estate an equalising dividend corresponding to the dividend he would have drawn if he had claimed in time for the first dividend. *If the creditor is not in possession of the necessary documents to prove his debt, he may depone as follows:* Depones, that the cause of the said bill and extract registered protest not being herewith produced, is, that the same are at present lodged in a process of suspension before the Court of Session, at the instance of O. P., the drawer and indorser of the said bill, against the said E. F., and accordingly the said E. F. claims to have a dividend set apart till a

reasonable time be afforded for production of said documents, or for otherwise establishing his debt according to law. *Where it is a contingent debt or an annuity,* vide *Form for Voting,* supra.] All which is truth, as the deponent shall answer to God.

B. C., *J. P.* E. F.

No. XXIII.

General Variations in the Form of Oaths, whether for Petitioning, Voting, or Ranking.

1. *If the oath is taken out of the kingdom of Great Britain and Ireland, there must be a certificate by a British Minister, or a British Consul, or a Notary Public, to the following effect:* New York, 20th May 1856. This is to certify that B. C., who adhibits his signature to the foregoing oath as magistrate of L., is a person duly qualified to administer oaths in the said town of L.

2. *If the creditor is a company, the oath is taken by a partner:* Compeared E. F., a partner of the firm of E. F. and Company, merchants in Glasgow, &c.

3. *If the creditor is a body of executors, trustees, or tutors, one of them depones to the debt:* Compeared E. F., merchant in Glasgow, one of the accepting and acting executors of the deceased R. S., manufacturer in Glasgow, who, being solemnly sworn and examined, depones, that H. I., manufacturer in Glasgow, was, at the date of the sequestration of his estates, and still is, truly indebted and owing to C. D., P. O., and the said E. F., all merchants in Glasgow, the accepting and acting executors of the said deceased R. S., &c.

4. *If the creditor is a corporation, an oath of verity must be made by the secretary, manager, cashier, clerk, or other principal officer:* Compeared E. F., residing in Glasgow, manager of the [*enter designation*], &c.

5. *If the creditor is under age, or incapable to make oath, then the following oath of credulity may be taken by his authorised agent, factor, or manager:* Compeared E. F., merchant in Glasgow, factor *loco tutoris* for N. O., residing in Glasgow, only surviving child of R. O., manufacturer there, now deceased, who, being solemnly sworn and examined, depones, that he believes that H. I., manufacturer in Glasgow, was, at the date of the sequestration of his estates, and still is, justly indebted and owing to the said N. O., &c.

6. *If the creditor is out of the kingdom of Great Britain and Ireland, his known agent or mandatory within it may make an*

oath of credulity in terms similar to the above: Compeared E. F., merchant in Glasgow, the known agent of G. H., merchant in Toronto, Upper Canada, who, being solemnly sworn and examined, depones, that he believes that H. I., &c.

7. *Where the debt is past due, and interest has accrued thereon, then, after the words* "per account produced," *add:* with the legal interest on said sum from the day of when the said account became due, till the date of said sequestration [*or*, till the date hereof, *if the sequestration is not awarded*], amounting to £5, which, with the said principal sum, amounts in all to the sum of £105.

8. *If the debt is not due till some future period, then the creditor, after the words* "per account produced," *may depone as follows:* but under deduction of the sum of £5 sterling, being the interest on said account from this date till the same is payable, leaving a balance due to the said E. F. of £95. *If the debt is liable to a discount beyond legal interest, then, instead of these words, add:* but under deduction of said sum of £5 sterling, being the interest on said account from this date till the same is payable, and the farther sum of £10 sterling, being the discount to which the said debt is liable by the usage of trade, thus leaving a balance due to the deponent of £85 sterling.

9. *If the creditor is a Quaker, Moravian, or Separatist, he may declare in the following way:* Compeared A. B., merchant in Glasgow, who, being solemnly examined, affirms and declares as follows—viz.: I, A. B., being one of the people called Quakers [*or* one of the persuasions of the people called Quakers, *or* of the united brethren called Moravians, *or* of the body called Separatists, *as the case may be*], do solemnly, and sincerely, and truly declare and affirm, &c.

10. *If the creditor is unwilling, from conscientious motives, to be sworn, he may declare in the following way:* Compeared E. F., merchant in Glasgow, who, being solemnly examined, affirms and declares as follows—viz.: I, E. F., above designed, solemnly, sincerely, and truly affirm and declare that the taking of any oath is according to my religious belief unlawful, and I do solemnly, sincerely, and truly affirm and declare, &c.

No. XXIV.

Abbreviates for the Register of Inhibitions, and Certificate by Keeper.

(*Vide* Schedule A, annexed to Act 1856, *antea.*)

No. XXV.

Gazette Notice of Sequestration.

(*Vide* Schedule B, annexed to same Act, *antea.*)

No. XXVI.

Petition for Recall of Sequestration, and Gazette Notice.

(*Vide* Act 1856, s. 31.)

[*Date.*] Unto the Honourable the Lord Ordinary officiating on the Bills, the petition of A. B., merchant in Glasgow, a creditor of D. E., after designed,

Humbly showeth,—That on the day of , D. E., merchant in Glasgow, with the concurrence of F. G., also merchant there, an alleged creditor of the said D. E., to the extent required by law, presented a petition to the Sheriff of the county of Lanark for sequestration of his estates, under the "Bankruptcy (Scotland) Act, 1856," and Acts explaining and amending the same, upon which application the said Sheriff pronounced a deliverance of the said date, awarding sequestration of the estates of the said D. E., and declaring the same to belong to his creditors, and appointing a meeting thereof for the election of a trustee.

That it was *inter alia* set forth in the said petition, that the said D. E., for the year preceding the date thereof, had resided or carried on business in Glasgow, in the county of Lanark, which averment is untrue; and the petitioner here alleges, and offers to instruct if necessary, that the said D. E. never resided nor carried on business in Glasgow, nor in any part of the county of Lanark.

That the said D. E. not having so resided or carried on business within the county of Lanark, as required by the Statutes, the said sequestration will fall to be recalled upon these grounds.

That the petitioner is a creditor of the said D. E. to the extent of £ conform to oath and bill herewith produced.

May it therefore please your Lordship, on considering this petition, to order a copy thereof, and of the deliverance to follow thereon, to be served upon the said D. E. and F. G. or on their respective known agents [and on the trustee, *if appointed*], and require them to answer within a specified short time; also order a

notice of the presentation of this petition to be published in the 'Edinburgh Gazette,' and on the expiration of the time so fixed, and with or without answers, recall the said sequestration, and appoint the judgment of recall to be entered in the Register of Sequestrations, and on the margin of the Register of Inhibitions, all in terms of sect. 31 of the Statute first above mentioned: Find the respondents liable in expenses of process, and do otherwise in the premises as to your Lordship shall seem proper.

According to justice.

Gazette Notice of Petition for Recall of Sequestration.

(*Vide* Act 1856, s. 31.)

Notice.

A. B., merchant in Glasgow, hereby gives notice that he has presented to the Lord Ordinary officiating on the Bills, a petition for recall of the sequestration of the estates of C. D., merchant in Glasgow.

Glasgow, Nov. 1, 1856. A. B.

No. XXVII.

Petition for Sist of Sequestration, and Deliverances thereon.

(*Vide* Act 1856, s. 36.)

Unto the Honourable the Lord Ordinary officiating on the Bills, [*or* the Sheriff of the county of Lanark]. The petition of A. B., writer in Glasgow, law agent in the sequestration of D. E., merchant in Glasgow. [*Date.*]

The petitioner, A. B.,

Humbly showeth,—That on the day of the whole estates, wherever situated, of the said D. E., were sequestrated by the Lord Ordinary officiating on the Bills [*or* by your Lordship], by virtue of the "Bankruptcy (Scotland) Act, 1856," and Acts explaining and amending the same, conform to the certified copy petition and deliverance thereon, herewith produced.

That at the meeting for the election of trustee in said sequestration, a majority in number and four-fifths in value of the creditors present or represented at said meeting, re-

solved, that the estate ought to be wound up under a deed of arrangement, and that an application should be presented to your Lordship to sist procedure in the sequestration for a period not exceeding two months: And on said resolution being carried, the creditors did not proceed to the election of a trustee.

That F. G., H. I., and J. K., all merchants in Glasgow, and creditors of the said D. E., present at the said meeting, being a minority of the creditors present or represented thereat, voted against the foresaid resolution, and protested that the said resolution was not carried by the statutory majority of legal votes.

That the petitioner was appointed by the meeting to report said resolution to your Lordship, and to apply for a sist of the sequestration in terms thereof, all conform to the minute of said meeting of creditors and report in terms thereof, herewith produced.

May it therefore please your Lordship, on considering this petition, to appoint such intimation thereof to be made to the said F. G., H. I., and J. K., as your Lordship may deem just, and ordain them to appear before your Lordship at such diet as may be appointed: And on again considering this petition, and after hearing parties having interest, if any, find that the said resolution was duly carried, and that this application is reasonable, and grant a sist of procedure in the said sequestration for a period not exceeding two months: All in terms of the said resolution and of sect. 36 of the Statute first above mentioned.

According to justice.

First Deliverance thereon.

[*Place and date.*]—Having considered the foregoing petition, before answer appoints a copy thereof and of this deliverance to be served upon each of the creditors who voted against the resolution therein mentioned, or upon their mandatories or known agents, and appoints parties or their procurators to be heard, &c.

Second Deliverance thereon.

[*Place and date.*]—The Lord Ordinary [*or* Sheriff-Substitute] having considered the foregoing petition, with minutes and report therewith produced, and having heard the procurator for the petitioner, no appearance being made for the opposing creditors: Finds that a majority in number and

four-fifths in value of [*or* all] the creditors or mandatories of creditors assembled at said meeting, have resolved that the estates of the bankrupt, D. E., ought to be wound up under a deed of arrangement, that such resolution has been duly carried, and that the application is reasonable; therefore sists procedure in the sequestration for the period of from this date.

No. XXVIII.

Deed of Arrangement and Deliverances thereon, with Declaration by Bankrupt.

(*Vide* Act 1856 s. 38; and Act 1860, s. 5.)

This deed of arrangement, entered into and executed by and between A. B., merchant in Glasgow, on the one part, and the subscribers named and designed in the testing clause hereof, creditors [*or* mandatories for creditors] in the sequestration of the said A. B., and constituting four-fifths in number and value of the whole creditors of the said A. B. on the other part, witnesseth that, upon the day of eighteen hundred and , the estates of the said A. B. were sequestrated by the Lord Ordinary officiating on the Bills by virtue of the "Bankruptcy (Scotland) Act, 1856," and Acts explaining and amending the same [*or*, by the Sheriff of the county of Lanark]; that at the statutory meeting of creditors, held at Glasgow, upon the day of for the election of trustee in the sequestration, a majority in number and four-fifths in value of the creditors present or represented at said meeting, resolved that the estate ought to be wound up under a deed of arrangement, and that an application should be presented to the Lord Ordinary [*or* the Sheriff] to sist procedure in the sequestration for the period of [*not exceeding two months*], and on said resolution being carried, a trustee was not elected; that M. N., writer in Glasgow, the law agent in the sequestration, was appointed by the meeting to report said resolution to the Lord Ordinary [*or* the Sheriff], and to apply for a sist of the sequestration in terms thereof, and on said report and application being made to the Lord Ordinary [*or* the Sheriff], and he having heard all parties having interest and compearing, and having found that said resolution was duly carried, and that the application was reasonable, granted the same. And whereas an arrangement having been effected in the terms underwritten, by and between the said first and second parties, it is necessary

that these presents should be entered into, therefore it is hereby arranged by and between the said parties as follows—viz.: On the one part, the said A. B., as principal, and D. E., merchant in Glasgow, as cautioner, surety, and full debtor for and with the said A. B., do hereby bind and oblige themselves, jointly and severally, and their respective heirs, executors, and successors, to pay to each and all of the true and lawful creditors of the said A. B., the sum of 5s. per pound of the several debts and obligations contracted by him, or for which he was liable at the date of the sequestration of the estates of the said A. B., and that by two equal instalments payable at three and six months respectively after the date of the approval hereof and of the sequestration being declared at an end, together with the legal interest of the said composition, from and after the said respective terms of payment during the not-payment of the same, with a fifth part more of each payment, in name of penalty, in case of failure in the punctual payment thereof, as also to pay the whole expenses incurred in obtaining and following forth the sequestration, and in carrying through and obtaining the approval of this deed of arrangement. [*Bills for the composition may be stipulated for.*] And the said A. B. and D. E. do hereby renounce all objections to those claims which have been lodged by the creditors, or are entered in the bankrupt's state of affairs; and farther, the said A. B. and D. E. do hereby renounce and abandon all right of challenge against the creditors on the estate, so far as they may have acquired securities or preferences over the estate, or any part thereof, always saving and excepting the right to challenge a deed [*Here describe it*]. And the said A. B. bind sand obliges himself and his foresaids to free and relieve and to keep harmless and scaithless the said D. E. and his foresaids of payment of all or any of the said sums, principal, interest, and penalty, and of all loss, damage, and expense, which the said C. D. may incur by becoming cautioner in manner foresaid. And, on the other part, the said creditors, or agents or mandatories for creditors of the said A. B., have exonered and discharged, as they do by these presents, exoner, acquit, and for ever simpliciter discharge the said A. B. of all debts and obligations contracted by him, or for which he was liable at the date of said sequestration, and of all claims said creditors, or the constituents of said agents or mandatories for creditors, had against the said A. B. at the date of said sequestration, reserving always the claims of the creditors for the said composition against the said A. B. and his cautioner, and also reserving to such of them as hold collateral securities or obligations for the debts owing by the said A. B., their claims against such collateral securities or obligants as accords. And the

said creditors, or agents or mandatories for creditors, hereby authorise and empower the said A. B., or his agent, to produce this deed of arrangement forthwith to the Sheriff for his approval, and to have the sequestration declared at an end. And the creditors foresaid, subscribing themselves and by their agents or mandatories, do hereby authorise (on this deed of arrangement being approved of, and the sequestration being declared at an end, in terms of the Statutes), an abbreviate of this deed, and the deliverance so declaring the sequestration at an end, to be recorded in the Register of Abbreviates of Adjudications at Edinburgh, and also that the keeper of said register shall, if required, grant a certificate of such registration. [*This last-mentioned clause only to be inserted if a trustee has been elected, and an abbreviate of adjudication lodged by him, in terms of s.* 79.] Declaring always, that in the event of these presents not being approved of, or the said sequestration not being declared at an end, the claims of said creditors shall revive for their full debts in the same way as if these presents had not been granted. And farther, the said creditors, for all right and interest they have acquired by or through said sequestration, do hereby renounce and discharge the same, and reinvest, restore, and retrocess the said A. B., his heirs, executors, and assignees, in and to his whole estate, heritable and moveable, real and personal, wherever situated, belonging to the said A. B., at the date of his said sequestration, or subsequently acquired or succeeded to, together with all right created by the sequestration to prevent, challenge, or set aside preferences over the estate, so far as applies to the particular preference before mentioned, granted to M. N.; surrogating and substituting the said A. B., and his foresaids, in their full right and place in the premises. And said creditors warrant this discharge at all hands, and against all mortals as law will. And the whole parties to this deed or arrangement consent to the registration hereof in the books of Council and Session, or others competent, therein to remain for preservation, and if needful, that letters of horning on six days' charge, and all other execution necessary, may pass upon a decree to be interponed hereto in form as effeirs, and thereto constitute procurators. In witness whereof, &c.

First Deliverance.

(*Vide* Act 1856, s. 38, note *e.*)

[*Place and date.*]—Having seen the deed of arrangement produced before answer, appoints intimation of the production thereof and of this deliverance to be made by advertisement

published once in the 'Edinburgh Gazette' and , and also by circular posted to every creditor of the bankrupt who does not concur in the said deed, requiring all parties who desire to oppose the approval thereof to lodge in the hands of the Clerk of Court, a notice of appearance within ten days from the date of such publication or posting with certification, reserving thereafter to appoint a diet for hearing all parties interested, and to make any inquiry which may be deemed necessary. Meantime appoints the said deed and the process to remain with the Clerk of Court subject to inspection.

Second Deliverance.

[*Place and date.*]—Having resumed consideration of this process and seen the and 'Edin-' burgh Gazette' of date the and respectively, each containing the intimation ordered by the previous interlocutor, together with certificates of posting of circulars to the non-concurring creditors, and no appearance being made to oppose the approval of the deed of arrangement, before pronouncing further appoints the bankrupt to appear before the Sheriff-Substitute within his Chambers here, on the [*date and hour*], to emit a declaration that the state of affairs produced is a correct state, that it or the relative documents contain a full and true list of all his creditors, and that there are no other non-concurring creditors than those to whom circulars have been sent, as contained in the said certificate, and that the said deed is subscribed by or by the authority of four-fifths in number and value of his creditors entitled to be computed in terms of the Bankrupt Statutes, at which diet allows all parties interested to be heard if they desire.

Declaration.

At the day of eighteen hundred and years, at o'clock noon, in presence of , in terms of the foregoing appointment: Compeared the bankrupt A. B. (there being no other party interested present), who being interrogated declares that the state of his affairs produced in process, and subscribed as relative hereto, is a correct state; that it or the documents therein referred to contain a full and true list of all his creditors, and there are no creditors who do not concur in the deed of arrangement produced other than those to whom circulars have been sent, as contained in the certificate produced, and which is also subscribed as relative hereto; and further, that

the said deed of arrangement is subscribed by or by the authority of four-fifths in number and value of his creditors entitled to be computed in terms of the Bankrupt Statutes; all which he declares to be truth.

Final Deliverance.

(To be written on deed of arrangement.)

[*Place and date.*]—The Lord Ordinary [*or* Sheriff-Substitute] having resumed consideration of this process of sequestration of the estates of [*name and designation*] awarded on the day of eighteen hundred and , together with the within deed of arrangement between (him) and (his) creditors produced in process on the day of (current), and having advised the declaration made of this date by the bankrupt, Finds that the said deed of arrangement has been duly entered into and executed and is reasonable, and hereby approves thereof and declares the said sequestration at an end. Further, appoints the said deed, together with this deliverance, to be recorded in the Sheriff Court books of Lanarkshire at Glasgow, all in terms of the "Bankruptcy "(Scotland) Act, 1856," and Acts explaining or amending the same.

No. XXIX.

Petition by the Bankrupt for Liberation, and Deliverances thereon, &c.

(*Vide* Act 1856, s. 45.)

Unto the Honourable the Lord Ordinary officiating on the Bills [*or* Sheriff of the county of Lanark.] A. B., merchant in Glasgow, *v.* D. E., manufacturer in Glasgow. [*Date.*]

The petitioner, A. B.,

Humbly showeth,—That on the day of , the estates of the said A. B. were sequestrated by the Lord Ordinary officiating on the Bills [*or* by your Lordship], by virtue of the "Bankruptcy (Scotland) Act, 1856," and Acts explaining and amending the same.

That the petitioner has been, since the day of , and still is, imprisoned in the jail of Glasgow, under diligence, at the instance of the respondent, D. E., for a debt amounting to £80 sterling, interest and expenses.

That the inability of the petitioner to meet his engagements

has arisen from losses in trade and depreciation of stock from the falling of markets, and can in no way be attributed either to the fraud or extravagance of the petitioner.

That, in these circumstances, the petitioner humbly submits that he is entitled to liberation.

May it therefore please your Lordship, on considering this petition, to appoint such intimation of the present petition to be made to D. E., the respondent, or to F. G., merchant in Glasgow, the known agent of the said D. E.; and in the event of no appearance being made by or on behalf of the respondent, or after hearing any objection that may be offered to this application, grant warrant to the keeper of the prison of Glasgow, forthwith to liberate the petitioner from said jail, all in terms of sect. 45 of the Statute first above mentioned.

According to justice.

First Deliverance thereon.

[*Place and date.*]—Having considered the foregoing petition, appoints a copy thereof, and of this deliverance, to be served upon , the incarcerating creditor, or his known agent, and appoints parties, or their procurators, to be heard thereon, before the , within his Chambers here, on the day of at , with certification.

Second Deliverance thereon.

[*Place and date.*]—Having heard parties' procurators [*or*, having heard the procurator for the petitioner, in terms of the preceding appointment, no appearance being made for the respondent], grants warrant for the liberation of the bankrupt, A. B., from the prison of Glasgow, so far as detained on diligence for civil debt at the instance of the respondent, D. E., as craved.

Form of Certified Copy.

Certified copy interlocutor of the , granted in the sequestration of [*name and designation*], [*or* on the application of [*name and designation*] in the process of sequestration of his estates.]

I certify the above to be a true copy of the warrant of liberation granted by the , in favour of the above designed A. B.

No. XXX.

Petition for Valuation of Annuity, and Deliverance thereon.

(*Vide* Act 1856, s. 54.)

Unto the Honourable the Sheriff of the county of Lanark. [*Date.*]
The petition of A. B., merchant in Glasgow, a creditor on the sequestrated estate of D. E., as after-mentioned.

The petitioner, A. B.,

Humbly showeth,—That on the day of , the estates of the said D. E. were sequestrated by the Lord Ordinary officiating on the Bills [*or* by your Lordship], by virtue of the "Bankruptcy (Scotland) Act, 1856," and Acts explaining and amending the same, and by the deliverance awarding sequestration a meeting of creditors has been fixed for the election of trustee.

That the petitioner is a creditor of the bankrupt under a bond of annuity granted by the bankrupt in his favour, of date the day of , whereby, in consideration of the sum of £ advanced and paid by the petitioner to the bankrupt, as the full price and value of the annuity after-mentioned, the bankrupt bound and obliged himself, his heirs, and successors, to pay to the petitioner, during all the days of his life, a free annuity of , payable at two terms in the year, Whitsunday and Martinmas, by equal portions, with a fifth part more of liquidate penalty in case of failure, beginning the first term's payment of said annuity at the term of Whitsunday 185 , and continuing the payment thereof at each term of Whitsunday and Martinmas thereafter, during his life, with the legal interest of the said annuity, from the respective terms at which it should fall due, during the not-payment of the same, all conform to said bond of annuity herewith produced.

That, as the petitioner is not entitled to vote and draw a dividend under said sequestration until said annuity has been valued in terms of the Statute, the petitioner is under the necessity of making this application to your Lordship, to have said annuity valued, in terms of s. 54 of the Statute first above mentioned.

May it therefore please your Lordship, on considering this petition, to appoint notice thereof to be given to D. E., the bankrupt, and M. N., merchant in C., the concurring creditor in the sequestration; and thereafter, on again considering this petition, with or without objections, to fix and put a value on the foresaid annuity; and that, to the effect of entitling the peti-

tioner to vote and draw dividends, in respect of such value, and do otherwise as to your Lordship may seem proper.

According to justice.

First Deliverance thereon.

Glasgow, 185 .—Having considered the foregoing petition, appoints a copy thereof, and of this deliverance, to be served upon each of A. B., the bankrupt, and C. D., the concurring creditor, or his known agent, and appoints parties, or their procurators, to be heard thereon, before the Sheriff-Substitute within his Chambers here, on the day of .

Second Deliverance thereon.

Glasgow, 185 .—Having resumed consideration of the foregoing petition, and heard the procurator for the petitioner, in terms of the preceding appointment, no appearance being made for the respondents, Fixes the value of the petitioner's claim for an annuity on the sequestrated estates of A. B., merchant in Glasgow, at the sum of one hundred pounds sterling, and that in terms of the "Bankruptcy (Scotland) Act 1856," [*or*, Before answer remits to to put a value on the petitioner's claim and to report.]

N.B.—*The same forms will serve for valuation of a contingent claim.*

No. XXXI.

Petition to compel Creditor to Assign Security.

(*Vide* Act 1856, s. 62.)

Unto the Honourable the Sheriff of the county of Lanark.

A. B., accountant in Glasgow, trustee on the sequestrated estate of C. D., after designed, *v.* E. F., merchant in Glasgow, a creditor on the said estate.

The petitioner, A. B.,

Humbly showeth,—That on the day of , the estates of C. D., merchant in Glasgow, were sequestrated by your Lordship, under the "Bankruptcy (Scotland) Act, 1856," and Acts explaining and amending the same, and the petitioner has been duly elected and confirmed trustee in the sequestration.

That at the meeting of the creditors on the said sequestrated estate, held at Glasgow, upon the day of , the said E. F., respondent, lodged an oath and claim upon a debt held by him against the bankrupt, amounting to £500 sterling, but in respect that the said E. F. had acquired a security over certain funds of the bankrupt lying in the hands of the Bank, by virtue of an arrestment executed at the said E. F.'s instance against the bankrupt, in the hands of the said bank, upon the day of , whereby the said funds were legally attached in security, and for payment of the said E. F.'s debt—the said E. F. valued the said security at the sum of ten pounds, and after deducting that sum from his debt, he claimed to vote and rank upon the said sequestrated estate for the sum of £490 sterling.

That the said E. F. made use of his said oath and claim in voting at the said meeting of creditors above mentioned.

That the petitioner, with consent of G. H., I. J., and K. L., all merchants in Glasgow, and commissioners in the said sequestration, has required from the said E. F. a conveyance or assignation in his favour, as trustee foresaid, of the security above mentioned, on payment of the specified value, with 20 per centum in addition to such value; and although the said E. F. is bound by the Statutes to grant such conveyance or assignation at the expense of the estate, yet he refuses and delays to do so.

May it therefore please your Lordship, on considering this petition, to appoint a copy thereof, and of the deliverance to follow thereon, to be served upon the respondent, and appoint a diet for hearing parties thereon; and, on again advising this petition, decern and ordain the said E. F., respondent, to grant a conveyance or assignation in favour of the petitioner, as trustee foresaid, of the security before mentioned, on payment of the said sum of £10, being the specified value of said security, with 20 per centum in addition to said value, and that at the expense of the said sequestrated estate, all in terms of s. 62 of the Statute first above mentioned; find the respondent liable in the expenses of process, and do otherwise as to your Lordship shall seem proper.

According to justice.

No. XXXII.

Minutes of First General Meeting of Creditors, with Report and Deliverances, &c.

(*Vide* Act 1856, s. 68.)

Minutes of the first general meeting of creditors on the sequestrated estates of A. B., merchant in Glasgow, held within the at Glasgow, upon the day of , at 12 o'clock noon.

In terms of the deliverance of the Lord Ordinary on the Bills [*or* of the Sheriff of the county of Lanark], appointing this meeting to be held at the above time and place, for the election of a trustee or trustees in succession on the said sequestrated estates, and for doing the other acts provided by the "Bankruptcy (Scotland) Act, 1856," there assembled the following creditors and mandatories for creditors—viz.:

(1) C. D., merchant in Glasgow, who produced oath and bill for a debt of £80.

(2) F. G., accountant in Glasgow, as mandatory of H. I., merchant in Glasgow, who produced oath and accounts for a debt of £150, also mandate in his favour.

(3) J. K., a partner of the firm of J. K. and Company, merchants in Glasgow, who produced oath and vouchers for a debt of £200.

There was laid on the table by M. N., the law agent in the sequestration, the following documents: (1) Certified copy of the petition for sequestration; (2) Oath and vouchers of the concurring creditor; (3) The London and Edinburgh Gazettes, containing notices of this meeting.

The creditors having first proceeded to the election of a preses and clerk, in terms of the Statute, unanimously elected C. D., above designed, to be the preses of the meeting, and M. N., above designed, to be the clerk.

The preses marked the oaths and productions of the various creditors and their mandatories with his initials.

There was delivered to the clerk of the meeting, by the bankrupt, a state of his affairs as required by the Statute.

The creditors then proceeded to the business of the meeting, and being of the opinion that F. G., above designed, is a fit person to be trustee on this sequestrated estate, they unanimously elected him to that office. The creditors fixed £500 as the sum for which the trustee shall find security for his intromissions and performance of the duties and rules enacted by the Statute, and decided that R. S., merchant in Glasgow,

the cautioner proposed by the trustee, was a sufficient cautioner.

Thereafter the creditors elected C. D., H. I., and J. K., to be the commissioners on the said sequestrated estate.

Lastly, the creditors present unanimously resolved that the personal protection of the bankrupt ought to be renewed for a period of three months.

In witness whereof, these minutes, written by the clerk in the presence of the meeting, are signed by the preses, in terms of the Statute. C. D., *Preses.*

The preses begs respectfully to report the foregoing proceedings to the Sheriff of Lanarkshire, in terms of the Statute.

C. D.

(1.) *If there be a competition for the office of trustee or commissioner, the following form will require to be used :—*

The meeting then proceeded to the election of trustee on the sequestrated estate, when the following gentlemen were proposed as candidates for the office—viz., F. G., above designed, and S. T., accountant in Glasgow. [*If a personal objection is to be stated to any of the candidates, it must be done at this stage.* But before proceeding to the vote, it was stated by the said A. B. as a personal objection to the election of the said S. T., that he is conjunct and confident with the bankrupt, in so far as he is not only his brother-in-law, but is also acting as factor for him in the management of his property.] No personal objections having been offered to any of the candidates, the meeting proceeded to a vote, the result of which was as follows—viz. :

For the election of the said F. G., there voted,

(1) A. B., above designed, whose claim amounts to	£80	0	0
(2) The said F. G., as mandatory for H. I., above designed, whose claim amounts to . .	150	0	0
Being in all the sum of	£230	0	0

For the election of the said S. T., there voted,

(1) J. K., partner of J. K. and Company, above designed, whose claim amounts to . . .	200	0	0
Leaving the sum of	£30	0	0

as an apparent majority in value in favour of the said F. G.

The creditors fixed £500 as the sum for which the trustee shall find security for his intromissions and performance of the duties and rules enacted by the Statute, and decided that R. S., merchant in Glasgow, the cautioner proposed for the

said F. G., and V. W., manufacturer in Glasgow, the cautioner proposed for the said S. T., were sufficient cautioners for the respective candidates.

(2.) *If the estate is to be wound up by a deed of arrangement, the clause electing a trustee may be kept out, and the following substituted.*

The creditors then proceeded to consider the state of the bankrupt's affairs, and having conferred with the bankrupt upon the subject of an arrangement being effected between them, it was unanimously resolved by the creditors present or represented at this meeting, that the estate ought to be wound up under a deed of arrangement, and M. N., the law agent in the sequestration, was appointed to report this resolution to the Sheriff of the county of C., and to present an application to said Sheriff to sist procedure in the sequestration for a period of one month from the date hereof; and said resolution having been carried, the creditors resolved not to proceed to the election of a trustee.

N.B.—If no trustee elected, the creditors perhaps had better authorise the bankrupt to apply for a renewal of his protection, as it is the trustee who is directed by the Statute to make the application (s. 77).

(3.) *If composition is to be made, the following offer will require to be introduced into the minute; and there may also be introduced in the offer the following stipulations—viz.:* (1) *For a right to reduce preferences and for an assignation from the creditors for that purpose;* (2) *In the case of a partner making the offer, a stipulation for an assignation to the Company's assets;* or (3) *A stipulation by the cautioner that he get a conveyance to the estate.*

N. B.—*In whatever form the offer may be made, care should be taken to provide for the different creditors getting no greater or less share than they would be entitled to in a ranking for a dividend—as otherwise the Court might not approve the offer as "reasonable" under* s. 138 : ex. gr.—*Suppose the first dividend had been made for which a creditor was not in time, but who was entitled to an equalising dividend on the recurrence of the next statutory period, it would be necessary to keep that in view in the making of the offer.*

The bankrupt then made the following offer of composition:

To the creditors on the sequestrated estate
of A. B., merchant in Glasgow.

Glasgow, 1st Nov. 1856.

GENTLEMEN,—I hereby make an offer of a composition on my whole debts of 5s. per pound, payable by two equal in-

stalments, at three and six months respectively from the date of my discharge; and I agree to pay or provide for the whole expenses attending the sequestration, and the remuneration to the trustee; and I propose R. S., manufacturer in Glasgow, as my cautioner for the said composition, expenses, and remuneration.—I am, Gentlemen, your obedient servant,

[*Signed by bankrupt.*]

Glasgow, 1st Nov. 1856.—I hereby undertake the above obligation. [*Signed by cautioner.*]

The creditors unanimously resolved to entertain the said offer and security for consideration.

(4.) *If a judicial factor has been appointed, it will be necessary to insert some such clause as the following:—*

W. X., accountant in Glasgow, appeared at the meeting, and reported that having been appointed judicial factor on this estate, under a warrant of the Sheriff, he proceeded, in virtue of the powers contained in said warrant, to take measures for the interim preservation of the estate, and in particular that he had sold, by public auction, a considerable quantity of perishable goods, as shown by the roup-roll produced at the meeting. The judicial factor further reported, that he did not consider it necessary to take any other steps for preserving the estate. He produced an account of his intromissions with the funds of the estate, showing a balance in his hands, amounting to £330, 10s., which had been duly lodged in bank, as shown by a deposit-receipt produced.

The meeting being satisfied with the conduct of the judicial factor, fixed his remuneration at the sum of £ , for which he was authorised to take credit in accounting with the trustee.

(5.) *The creditors may likewise give directions for the management of the estate; appoint the bank in which the monies are to be deposited; and fix whether the auditor of the Court of Session or Sheriff Court is to tax the law expenses.*

Deliverance declaring Election of Trustee.

Glasgow, 1st Nov. 1856.—The Sheriff-Substitute, having considered the foregoing minutes, hereby declares to have been duly elected trustee on the sequestrated estates of in terms of the Statutes.

Deliverance confirming same.

Glasgow, 1st Nov. 1856.—The Sheriff-Substitute, in respect of a bond of caution, in terms of the foregoing minutes, and of

the Statutes, having been lodged for as trustee on the sequestrated estate of , hereby confirms the election of the said as trustee, and allows an act and warrant to go out and be extracted accordingly.

Confirmation of Commissioners.

(To be inserted in sederunt-book.)

Glasgow, 1st Nov. 1856.—The Sheriff-Substitute hereby declares to have been duly elected commissioners on the sequestrated estates of in terms of the Statutes.

No. XXXIII.

Note of Objections.

(*Vide* Act 1856, s. 70.)

Note of Objections by A. B., accountant in Glasgow, a competitor for the office of trustee in the sequestration of D. E., merchant in Glasgow, to the election of G. F., accountant in Glasgow, as trustee in the said sequestration.

I. This competitor objects to the said G. F. as a candidate for the said trusteeship upon the following grounds—viz.:

1. That the said G. F. is conjunct and confident with the bankrupt, in so far as he is brother-in-law to the bankrupt, and has acted as his factor for a series of years.

2. That the said G. F. has an interest adverse to the general body of creditors on this estate, in respect that, acting as factor aforesaid for the bankrupt, he has intromitted with a great quantity of the bankrupt's funds and effects, without having rendered any account of his intromissions, and is consequently liable in an action of count and reckoning at the instance of the trustee to be appointed on the estate.

II. This competitor objects to the votes of sundry creditors who supported the election of the said G. F. upon the grounds after mentioned:—

1. The vote of M. N., merchant in Glasgow, is objected to, in respect that there are no accounts or vouchers produced in terms of the Statute.

2. The vote of O. P., merchant in Glasgow, is objected to, in respect that the creditor in the oath does not value and deduct the security therein specified in terms of the Statute.

In respect whereof.

No. XXXIV.

Bond of Caution for Trustee.

(*Vide* Schedule C. annexed to Act 1856.)

No. XXXV.

Act and Warrant of Confirmation of Trustee.

(*Vide* Schedule D. annexed to same Act.)

No. XXXVI.

Abbreviates for Register of Adjudication and Certificate.

(*Vide* Schedule E. annexed to same Act.)

No. XXXVII.

Gazette Notice of Trustee's Appointment and of Second Meeting.

(*Vide* Schedule F. annexed to same Act.)

No. XXXVIII.

Gazette Notice calling Meeting for Election of a new Commissioner.

(*Vide* Act 1856, s. 75.)

C. D., accountant in Glasgow, trustee on the sequestrated estate of A. B., merchant in Glasgow, hereby calls a meeting of the creditors, to be held within the on the day of at o'clock noon, for the purpose of electing a commissioner in the room of E. F., merchant in Glasgow, now deceased.

Glasgow, 18 . C. D., Trustee.

No. XXXIX.

Petition for Election of new Trustee, and Deliverance thereon.

(*Vide* Act 1856, s. 74.)

Unto the Honourable the Sheriff of the county of Lanark. [*Date.*]

The petition of A. B., merchant in Glasgow, a creditor on the sequestrated estate of D. E., merchant in Glasgow.

The petitioner, A. B.,

Humbly showeth,—That on the day of the estates of the said D. E. were sequestrated by the Lord Ordinary officiating on the Bills [*or* by your Lordship], by virtue of the "Bankruptcy (Scotland) Act, 1856," and Acts explaining and amending the same.

That F. G., accountant in Glasgow, was elected trustee in said sequestration at the meeting of creditors, held on the day of , and his election was thereafter duly declared and confirmed.

That the said F. G. died upon the day of , which makes it necessary to apply to your Lordship to appoint a meeting for the election of a new trustee.

That the petitioner is a creditor on the estate to the extent of £80, conform to oath and bill produced in the sequestration.

May it therefore please your Lordship, on considering this petition, to grant warrant for holding a meeting of the creditors on the sequestrated estate of the said D. E., at a certain time and place, to be fixed by your Lordship, to elect a new trustee on said sequestrated estate, and authorise the petitioner to advertise in the 'Edinburgh Gazette,' seven days at least before the day of the meeting, a notice of the day, hour, place, and purpose of said meeting, all in terms of s. 74 of the Statute first above mentioned, and do otherwise as to your Lordship shall seem proper.

According to justice.

Deliverance thereon.

Glasgow, Nov. 1, 1856.—Having considered the foregoing petition, appoints a meeting of the creditors on the sequestrated estates of D. E., to be held at the time and place therein mentioned [*or* within on the day of at o'clock], for the purpose of electing a new trustee on the said sequestrated estates, and appoints intimation thereof to be made, at least seven days previous thereto, in the 'Edinburgh Gazette,' in terms of the Statutes.

No. XL.

Gazette Notice calling Meeting for Election of new Trustee.

(*Vide* Act 1856, s. 74.)

To the Creditors of A. B. & Company, merchants in Glasgow.

I, A. B., merchant in Glasgow, commissioner on the sequestrated estates of the said A. B. & Company, do hereby intimate that the Sheriff of Lanarkshire has appointed a general meeting of the creditors on the said estates, to be held within the Writing Chambers of on the day of 18 , at o'clock noon, for the purpose of electing a new trustee in room of F. G., deceased.

Glasgow, 18 . A. B.

No. XLI.

Petition for Renewal of Personal Protection, and Deliverance thereon.

(*Vide* Act 1856, s. 77.)

Unto the Honourable the Sheriff of the county of Lanark. [*Date.*]

The petition of A. B., accountant in Glasgow, trustee on the sequestrated estates of D. E., merchant in Glasgow.

The petitioner, A. B.,

Humbly showeth,—That on the day of the estates of the said D. E. were sequestrated by the Lord Ordinary officiating on the Bills [*or* by your Lordship], by virtue of the "Bankruptcy (Scotland) Act, 1856," and Acts explaining and amending the same, and a warrant of protection against arrest or imprisonment for civil debt was granted to the said D. E., until the meeting of the creditors for the election of trustee. That at the meeting of creditors for election of a trustee in the said sequestration, held upon the day of , a majority in number and value of the creditors present resolved that the personal protection of the bankrupt ought to be renewed for the period of months from the date thereof, conform to minute of the meeting of creditors herewith produced.

That the petitioner, as trustee in the sequestration, makes the following application in terms of said Statutes.

May it therefore please your Lordship to renew the foresaid personal protection of the said D. E., against arrest or imprisonment for civil debt, and that for the space

of months from the day of , all in terms of s. 77 of the Statute first above mentioned.

According to justice.

Deliverance thereon.

Glasgow, Nov. 1, 1856.—The Sheriff-Substitute having considered the foregoing petition, and seen the minutes of meeting of creditors therein referred to, grants a renewed warrant of protection in favour of the bankrupt for the period of months from the day of as craved.

No. XLII.

Inventory and Valuation of Estate made up by Trustee, under Act 1856, s. 80.

(*Vide* Form issued by Accountant in Bankruptcy, *antea*.)

No. XLIII.

State of Affairs made up by Bankrupt.

(*Vide* Act 1856, s. 81.)

State of the affairs of A. B., merchant in Glasgow, as at made up by him in terms of the 81st section of the "Bankruptcy (Scotland) Act, 1856."

Assets.

I. Estimated Value of Tenement situated in , occupied as shops and dwelling-houses, and yielding, conform to rental, a yearly sum of £ , . . . £
Less amount of heritable bond thereon in favour of , . . .

Surplus, £

II. Value of Stock-in-Trade belonging to the sequestrated estate, conform to inventory and valuation thereof produced herewith, .

III. Book Debts, ...

IV. Furniture:—
1. In dwelling-house, No. , conform to inventory and valuation. . . £

Carry forward, £

Brought forward, £

2. In counting-house and warehouse, conform to inventory and valuation, .

V. CASH AND BILLS RECEIVABLE in hand:—

1. Cash in hand at date of sequestration, . . £

2. Bills receivable—viz.

A. B. due 1/4 June, £

C. D. due 15/18 July,

E. F. due 20/23 July,

Total Assets, £

Liabilities.

I. PREFERABLE:—

Rent of warehouse situated in for current year, ... £

Rent of dwelling-house occupied by the bankrupt, No. , for current year,

Wages due to workmen, clerks, shopmen, and servants, at date of sequestration—viz.

(*Note.*—All such wages are preferable to the extent of one month prior to sequestration, provided they do not in each case exceed £60 per annum. As to household servants' wages, &c., *vide* Act 1856, s. 122 and note.)

II. ORDINARY—due on bills and open accounts—viz. . . . .

Total Liabilities, £

Rental of the Heritable Property belonging to the Sequestrated Estate of .

Description.	Tenants.	Duration of Occupancy.	Rent.	Arrears.	Dates of Payment.

No. XLIV.

Petition to compel Bankrupt to Grant Deed.

(*Vide* Act 1856, s. 81.)

[*Date.*] Unto the Honourable the Sheriff of the county of Lanark. A. B., accountant in Glasgow, trustee on the sequestrated estates of D. E., merchant in Glasgow, *v.* D. E., above designed.

The petitioner, A. B.,

Humbly showeth,—That on the day of , the whole estates, wherever situated, of the said D. E., were sequestrated by the Lord Ordinary officiating on the bills [*or* by your Lordship], by virtue of the "Bankruptcy (Scotland) Act, 1856," and Acts explaining and amending the same.

That the petitioner was elected trustee in said sequestration at the meeting of creditors held on the day of , and his election was thereafter duly declared and confirmed, as shown by the act and warrant herewith produced.

That a portion of the bankrupt's property consists of a house, warehouse, and land attached thereto, situated in the city of New York, in the United States of America, as fully described in the writs and titles of said subjects, herewith produced.

That in order to complete the petitioner's title to the said subjects, and to recover and dispose of the same, there has been prepared by the petitioner's directions, and in accordance with the laws of the United States of America, a deed conveying the said subjects to the petitioner, as trustee foresaid, for the benefit of the creditors under the sequestration, conform to said deed herewith produced.

That the petitioner has called upon the bankrupt to grant and execute said deed, in terms of s. 81 of the Statute first above mentioned, but he refuses and delays to do so, which renders the present application necessary.

May it therefore please your Lordship, on considering this petition, to appoint a copy thereof, and of the deliverance to follow thereon, to be served upon the said D. E., the bankrupt, and appoint a diet for hearing parties thereon; and, on again advising this petition, decern and ordain the said D. E. forthwith to grant, in a legal and binding form, the deed before mentioned; and, in the event of the said D. E. refusing or delaying to do so, grant warrant to officers of Court to apprehend and imprison the said D. E. within the

jail of Glasgow, therein to remain so long as he so refuses or delays to grant said deed, and grant warrant to the governor of said jail to receive and detain the said D. E. accordingly; as also find and declare that the said D. E. has forfeited the benefits of the Statutes above mentioned.

According to justice.

N.B.—*Vide Act* 1856, *s.* 102, *note d, antea.*

No. XLV.

Petition for Dismissal of Trustee.

(*Vide* Act 1856, s. 83.)

Unto the Honourable the Sheriff of the county of Lanark. A.B., merchant in Glasgow, a creditor on the sequestrated estate of D. E., merchant in Glasgow, *v.* F. G., accountant in Glasgow, trustee on the said sequestrated estate. [*Date.*]

The petitioner, A. B.,

Humbly showeth,—That on the day of the estates of the said D. E. were sequestrated by the Lord Ordinary officiating on the Bills [*or* by your Lordship], by virtue of the "Bankruptcy (Scotland) Act, 1856," and Acts explaining and amending the same.

That F. G., the respondent, was elected trustee in said sequestration at the meeting of creditors held on the day of , and his election was thereafter duly declared and confirmed, in term of the Statute.

That since the said respondent has entered into the duties of his office, he has realised and converted into cash a considerable portion of the estate; and, in particular, the respondent, on the day of , realised and received the price of certain heritable subjects situated in Glasgow, and forming part of the estate, amounting to £500, and upwards.

That for six weeks and upwards the respondent has kept said money in his hands, and has failed to lodge the same in bank, in terms of the Statute first above referred to.

That the said money has not been kept by the respondent in his own hands from innocent causes.

That the petitioner is a creditor on the estate to the extent of £80, conform to oath and bill produced in the sequestration.

May it therefore please your Lordship, on considering this petition, to appoint a copy thereof, and of the deliverance to follow thereon, to be served upon the said F. G., the trustee, and appoint a diet for hearing parties, on a certain short inducie; and thereafter dismiss F. G., the respondent, from his office of trustee on the sequestrated estates of the said D. E., in terms of s. 83 of the Statute first above mentioned; find the respondent liable in expenses to the petitioner, all in terms of said Statute, and do otherwise as to your Lordship shall seem proper.

According to justice.

No. XLVI.

Petition against Trustee to Account.

(*Vide* Act 1856, s. 86 and 142.)

[*Date.*] Unto the Honourable the Sheriff of the county of Lanark. A. B., merchant in Glasgow, *v.* D. E., accountant in Glasgow, lately trustee on the sequestrated estate of the said A. B.

The petitioner, A. B.,

Humbly showeth,—That on the day of the estates of the said A. B. were sequestrated by the Lord Ordinary officiating on the Bills [*or* by your Lordship], by virtue of the "Bankruptcy (Scotland) Act, 1856," and Acts explaining and amending the same.

That D. E., the respondent, was elected trustee in said sequestration at the meeting of creditors held on the day of , and his election was thereafter duly declared and confirmed.

That at the meeting held after the bankrupt's examination, the petitioner made offer of a composition to his creditors of 5s. per pound, upon their debts, which offer was entertained by the meeting, and at a subsequent meeting called for the purpose, the said offer of composition was unanimously accepted by the creditors, and the usual bond for the composition having been lodged, with the trustee's report, your Lordship approved of the offer, and on the petitioner making the statutory declaration, your Lordship pronounced a discharge in his favour, and *inter alia* reinvested him in his estates, conform to extract thereof herewith produced.

That D. E., the respondent, as trustee foresaid, has in his hands the sum of £ and upwards, of funds which belonged to the estate and now belong to the petitioner, and for which the respondent refuses to account.

May it therefore please your Lordship, on considering this petition, to appoint a copy thereof, and of the deliverance to follow thereon, to be served upon the said D. E., the respondent, and ordain him to lodge a notice of appearance in common form, within a certain short induciæ; and on again advising this petition, decern and ordain the said D. E. to account for his intromissions as trustee foresaid, and to pay to the petitioner the sum of £ , being funds in his hands which belonged to the petitioner's sequestrated estate, and now belong to the petitioner, all in terms of s. 86 and 142 of the Statute first above mentioned; find the respondent liable in expenses, and do otherwise as to your Lordship shall seem proper.

According to justice.

No. XLVII.

Petition for Bankrupt's Examination, with Deliverances; also Warrant of Commitment, &c.

(*Vide* Act 1856, s. 87.)

Unto the Honourable the Sheriff of the county of Lanark. [*Date.*]

The petition of A. B., accountant in Glasgow, trustee on the sequestrated estates of D. E., merchant in Glasgow.

The petitioner, A. B.,

Humbly showeth,—That on the day of the estates of the said D. E. were sequestrated by the Lord Ordinary officiating on the Bills [*or* by your Lordship], by virtue of the "Bankruptcy (Scotland) Act, 1856," and Acts explaining and amending the same.

That the petitioner was elected trustee in said sequestration, at the meeting of creditors held on the day of , and his election was thereafter duly declared and confirmed, as shown by the act and warrant herewith produced.

That by the terms of the Statute first above cited, it is incumbent on the petitioner to make the following application

to your Lordship, to name a day for the public examination of the bankrupt.

[*If bankrupt is in prison, say,* That the said D. E. is at present imprisoned in the jail of Glasgow, for debt, or other civil obligation.]

May it therefore please your Lordship to name a day for the public examination of the bankrupt, and to issue a warrant for the bankrupt to attend for such examination within the Sheriff Court House, in Glasgow, on a specified day, and at a specified hour, to be named by your Lordship, being not sooner than seven days nor later than fourteen days from the date of your Lordship's warrant, all in terms of s. 87 of the Statute first above mentioned. [*If in prison, say,* And grant warrant to apprehend the bankrupt, and bring him before your Lordship for examination, and in respect the bankrupt is imprisoned in the jail of Glasgow, for a debt or other civil obligation, grant warrant to the keeper of the said prison, on receiving a duplicate of your Lordship's warrant, and an acknowledgment for the person of the bankrupt, to deliver him to the officer presenting the same, in terms of s. 88 of said first-mentioned Statute.]

According to justice.

Deliverance thereon.

Glasgow, 18 .—Having considered the foregoing petition, appoints the day of at o'clock, within the Sheriff Court House here, for the public examination of the bankrupt, and grants warrant for his attendance, all in terms of the Statutes.

Deliverance where Bankrupt is in Prison.

Glasgow, 18 .—Having considered the foregoing petition, grants warrant to the governor of the prison of Glasgow, on receiving a duplicate of this warrant, and an acknowledgment for the person of the bankrupt, D. E., to deliver him to either of the bar officers of Court presenting this warrant, and grants warrant to the said officer to apprehend the person of the said D. E., and bring him before the Sheriff for examination at the diet mentioned in the petition [*if it has been previously fixed*], or on [*mention the day and hour*], or to any other diet to which the examination may be adjourned, and after each diet to carry him back to said prison, and reincarcerate him therein, all in terms of the Statutes.

Warrant to Commit Bankrupt for Unsatisfactory Answer.

At Glasgow, the day of , in presence of : Compeared, &c.

The bankrupt being interrogated by the trustee, ? Depones, . The Sheriff-Substitute finds that the said answer is not satisfactory, in respect [*or* in so far as] , and ordains the bankrupt to give a satisfactory answer to the question, under certification of warrant of imprisonment; and the question being repeated, "What ?" the bankrupt repeated the same answer—viz., " ." The Sheriff-Substitute, in respect the bankrupt, A. B., has failed to comply with the order upon him to answer the said question to the satisfaction of the Sheriff-Substitute, on the motion of the trustee, grants warrant to imprison within the prison of the person of the said A. B., therein to be detained until he comply with the said order; meantime appoints the examination, so far as taken, to be authenticated in the usual way, and directs a duplicate of this warrant to be delivered to the officer for execution.

[*Signature.*]

And what I have before deponed to is truth, as I shall answer to God [*or* what I have before declared is truth].

[*Signature of Bankrupt.*]
[*Signature of Sheriff.*]

Duplicate for the Officer.

At Glasgow, the day of , in presence of , Esquire, Sheriff-Substitute of Lanarkshire.

In the examination of the bankrupt, A. B., merchant in Glasgow, the said bankrupt being *inter alia* interrogated by the trustee [*copy the part applicable to the unsatisfactory answer and warrant*]. *To be signed by the Sheriff.*

No. XLVIII.

Circular by Trustee to Creditors intimating Bankrupt's Examination, &c.

(*Vide* Act 1856 s. 87.)

Glasgow, 1st Nov. 1856.

Sir,—In compliance with the 87th section of the "Bankruptcy (Scotland) Act, 1856," I [*name and designation of*

trustee] hereby intimate that I have been elected trustee on the sequestrated estate of A. B., merchant in Glasgow.

The examination of the bankrupt will take place in the upon the day of 18 , at o'clock noon. The second general meeting of creditors will be held in the upon the day of 18 , at o'clock.

I have also to intimate, in compliance with said section, that in order to entitle you to the dividend to be declared at the first statutory period, your oath and grounds of debt must be lodged with me on or before the day of 18 ; and to entitle you to any subsequent dividends which may be declared, the same must be lodged at least two months before the time fixed for the payment thereof.

In the event of the time fixed for declaration of the first dividend being accelerated in conformity with the 133d section of the said Act, you will receive due intimation of the same.—I am, Sir, your obedient servant,

[*Signed by trustee.*]

N.B.—Sequestration awarded, 18 .

No. XLIX.

Petition for Examination of Third Parties, and Deliverance thereon.

(*Vide* Act 1856, s. 90.)

[*Date.*] Unto the Honourable the Sheriff of the county of Lanark. The petition of A. B., accountant in C., trustee on the sequestrated estates of D. E., merchant in Glasgow.

The petitioner, A. B.,

Humbly showeth,—That on the day of the estates of the said D. E. were sequestrated by the Lord Ordinary officiating on the Bills [*or* by your Lordship], by virtue of the "Bankruptcy (Scotland) Act, 1856," and Acts explaining and amending the same.

That the petitioner was elected trustee in said sequestration at the meeting of creditors held on the day of , and his election was thereafter duly declared and confirmed, as shown by the act and warrant herewith produced.

That the petitioner has reason to believe that the persons after named and designed can give information relative to this sequestrated estate—viz. [*names and designations.*]

That as it is necessary for the execution of the petitioner's duties as trustee foresaid to obtain such information from the

persons above-mentioned, the petitioner respectfully makes the following application, in terms of the Statutes above cited:

May it therefore please your Lordship to order an examination of the said within the Sheriff Court House in Glasgow, on a specified day, and at a specified hour, to be named by your Lordship, and to issue your Lordship's warrant, requiring said persons to appear: All in terms of s. 90 of the Statute first above-mentioned.

According to justice.

Deliverance thereon.

Glasgow, 18 .—Having considered the foregoing petition, grants warrant to messengers-at-arms and officers of Court to cite each of the therein designed A. B. and C. D. to appear before the sheriff, within on the day of at o'clock, for examination, with certification [*where it is not the bankrupt's wife, nor one of his family, nor his clerk or servant, add here,* such citation being made at least eight days before the said diet].

No. L.

Specimens of Interrogatories to be put to Bankrupt.

1. What kind of business have you been engaged in?
2. Where and when did you begin business?
3. What capital did you begin with?
4. Where did you obtain such capital?
5. What were your liabilities when you began business?
6. Who managed your business?
7. What were your yearly profits?
8. What were your yearly losses?
9. What was the amount of expenditure in managing your business?
10. What was the amount of your personal expenditure per annum?
11. What business books did you keep?
12. When were your books balanced?
13. When did you become insolvent?

14. What do you attribute your insolvency to?
15. When did you discover your insolvency?
16. What prospect had you at that time of retrieving your affairs?
17. Have you granted any preferences to creditors or gratuities to any one?
18. What are the nature and extent of your liabilities?
19. What is the nature of your assets, and have you surrendered them all to the trustee?
20. Had any other person an interest in your business?

No. LI.

Report by Trustee to Second General Meeting.

(*Vide* Act 1856, s. 96.)

Report by the trustee on the sequestrated estate of A. B., merchant in Glasgow.

To the second general meeting of creditors, held on .

On obtaining confirmation of his appointment, after the last meeting of creditors, the trustee took possession of the property of the bankrupt, and the books and documents belonging to the estate. He presented a petition to the Sheriff for the bankrupt's examination, and his Lordship having appointed for that purpose, the record thereof will be found in the sederunt-book.

The trustee has made a careful investigation into the whole of the bankrupt's affairs, and has taken such steps as appeared to him necessary for protecting the interests of the creditors. He has obtained valuations from competent parties of the various assets belonging to the estate; and he submits herewith a state of the affairs made up by him, from which it will appear that

The assets are, ... £
The liabilities are, . . .

Deficiency, . . . £
Showing, exclusive of expenses of sequestration, per pound.

Humbly reported by C. D., Trustee.

Glasgow, 185 .

No. LII.

Minutes of Second General Meeting of Creditors.

(*Vide* Act 1856, s. 96.)

Minutes of the second general meeting of creditors on the sequestrated estates of A. B., merchant in Glasgow, held within the at Glasgow, upon the day of at 12 o'clock noon.

In terms of an advertisement in the 'Edinburgh Gazette,' and of special notices by the trustee, calling the second statutory meeting of the creditors in the above sequestration, at the time and place above specified, there assembled the following creditors and mandatories for creditors—viz.

[*Here take in sederunt as in former minutes.*]

The trustee appeared and laid on the table a copy of the 'Edinburgh Gazette,' containing the advertisement calling this meeting.

The creditors thereupon elected A. B., above designed, as preses of the meeting, and M. N., law agent in the sequestration, as the clerk.

The trustee stated that he had prepared a report, setting forth the state of the bankrupt's affairs, and an estimate of what the estate may produce, which report the trustee exhibited at the meeting, and gave all explanations relative thereto.

The trustee reported, that in terms of the Statute he forthwith advertised in the 'Edinburgh Gazette' a notice that an offer of composition had been made and entertained at the meeting of creditors for the election of trustee, and that it would be decided upon at the meeting to be held after the examination of the bankrupt, and specifying the hour, day, and place, and also transmitted by post a letter to each of the creditors claiming on the estate, or mentioned in the bankrupt's state of affairs, containing a notice of such resolution, and of the day and hour at which, and the place where such meeting was to be held, and specifying the offer and security proposed, and giving an abstract of the state of the affairs, and of the valuation of the estate, so far as the same could be done, to enable the creditors to judge of such offer and security.

The creditors now assembled, having again taken into their consideration the said offer of composition made by the bank-

rupt, and the security proposed, unanimously resolved that said offer and security be accepted.

In witness whereof, these minutes, written by the clerk, in the presence of the meeting, are signed by the preses, to authenticate the same.

A. B., Preses.

No. LIII.

State of the Estate, of Funds recovered, and Property outstanding.

(Under Act 1856, s. 125.)

Vide Form issued by Accountant in Bankruptcy, *antea*.

No. LIV.

Account-Current or Progressive State of Trustee's Intromissions.

(Under Act 1856, s. 125.)

Vide Form issued by Accountant in Bankruptcy, *antea*.

No. LV.

Account of Charge and Discharge, and Certificate by Commissioners.

(*Vide* Act 1856, s. 125.)

Account, Charge, and Discharge, of the Intromissions of trustee on the sequestrated estate of ,

From 18

To 18

CHARGE.

I. Proceeds of heritable property.

18 . Received from , price of tenement situated in , sold by public roup upon the day of , 18 [*or* by private bargain], . . £

Carry forward, £ £

CHARGE—Continued. Brought ford., £ £
Interest thereon from Whitsunday last, to the term of entry till this date, ...

£
Less amount of heritable bond in favour of , . .
£

II. Rental.
18 . Received from , half year's rent of house occupied by him in £
[*Specify taxes and deduct them.*]

Received from ,
do. of shop in do., £
[*Specify taxes and deduct them.*]

III. Proceeds of stock in trade.
18 . Received from Messrs , auctioneers, the amount of roup-roll, under deduction of commission and expenses of sale, . .
or,
Received from , the amount of his offer for the stock, sold in one lot,

IV. Book debts received.
18 . Received from , in full of his account, . . £
Received from , to account
Received from , trustee on the sequestrated estate of , dividend of 10s. per pound on debt of £ , . . .

V. Proceeds of furniture.
18 . Received from Messrs , auctioneers, the amount of roup-roll of household furniture, less commission and expenses, £
Received from do., amount of counting-house furniture, less do., ...

Carry forward, £ £

CHARGE—Continued. Brought ford.,

VI. Cash and bills receivable on hand at date of sequestration.

1. Cash on hand.

18 . Received from bankrupt, or from judicial factor, . . £

2. Bills receivable on hand.

18 . Received amount of acceptance by , due to-day, . . £

Received amount of promissory note by , due to-day, . .

Amount of Charge, £

DISCHARGE.

I. Preferable debts paid.

1. Rent.

18 . Paid rent of house in , occupied by bankrupt for half-year to Whitsunday, £

Paid rent of warehouse and counting-house in , for do., . . .

£

2. Taxes.

18 . Paid poor's rate on dwelling-house, . . . £

Paid do. on warehouse, .

Paid prison assessment on dwelling-house, . . .

Paid do. on warehouse, .

Paid assessed taxes, . .

3. Wages.

18 . Paid wages to workmen, &c., per pay list, . . . £

Paid do. to household servants, per note, . . .

£

DISCHARGE—Continued. Brought ford., £ £

II. Aliment to bankrupt.
Paid [*according to circumstances*].

III. Cash lodged in bank.
18 . Paid, ...
Do. . . . .
Do. . . . .

£
Less sums drawn out—viz, .

IV. Expenses of sequestration and law charges.
18 . Paid Messrs , appraisers, for valuation of stock in trade, £
Paid do. for do. of furniture, .
Paid Mr for valuing heritable property, ...
Paid allowance to judicial factor, in terms of minute of first general meeting of creditors, . .
Paid seller's proportion of expense of disposition of tenement in , per note thereof, . . .
Paid account of business to law agent up to , . .
Paid postages, stamps, and incidents, to this date, . .

Amount of Discharge, . £

ABSTRACT.

Amount of Charge, as on page , . £
Amount of Discharge, as above, . . .

Balance due by trustee, as at , £

Certificate by Commissioners.

(To be engrossed in sederunt-book, Act 1856, s. 125.)

[*Place and date.*]—We, commissioners in the sequestration of A. B., merchant in L., do hereby certify that the balance due by the trustee in his account with the estate, as at the expiration of four months from the date of the deliverance actually awarding sequestration, amounts to the sum of £ sterling.

No. LVI.

Minute of Meeting of Commissioners.

(*Vide* Act 1856, s. 125.)

Minute of meeting of the commissioners in the sequestration of A. B., merchant in L., held at L. upon the day of , at o'clock—Present C. D., manufacturer, L.; E. F., merchant, L.; G. H., contractor, L.; also I. J., accountant, L., the trustee.

The trustee having laid before the meeting a state of the whole estate of the bankrupt, of the funds recovered by him, and of the property outstanding (specifying the cause why it has not been recovered), and also an account of his intromissions, and generally of his management, the commissioners proceeded to examine the said state and account, and compare the same with the vouchers applicable thereto, and found the same correct, and certified, by a writing under their hands engrossed in the sederunt-book, the balance due by the trustee in his account with the estate.

The commissioners ascertained that the trustee had duly lodged the monies recovered by him in bank.

The commissioners fixed the trustee's commission at 5 per centum on the sum of £ , being the gross amount realised and recovered by him, and authorised him to take credit for such commission in his accounts with the estate.

Lastly, the commissioners declared, after making a reasonable deduction for future contingencies, that the sum of £ of the produce of the estate shall be divided among the creditors, in terms of the Statute.

C. D., Commissioner.
E. F., Commissioner.
G. H., Commissioner.

No. LVII.

Adjudication on Claims by Trustee.

(*Vide* Act 1856, s. 126.)

Adjudication by the trustee on claims lodged in the sequestration of , on or before the , being two

months before the time fixed for payment of the first dividend.

I. A. B., merchant in Glasgow.

1. Open account for goods furnished by the claimant to the bankrupt, from to , amounting to £32, 6s. 8d.
2. Acceptance by the bankrupt to the claimant, dated , at four months' date, for £50.
3. Oath of verity by claimant, dated , claiming to be ranked for £82, 6s. 8d.

Deliverance by Trustee.

There is an open account of £15 standing against the claimant in the books of the bankrupt, which falls to be deducted from the sum claimed as above.

The claimant has omitted to deduct interest on the above bill from the date of sequestration till it became due.

The trustee, therefore, admits the claim thus:—

Amount claimed, ...				£82	6	8
Less						
Open account due by claimant,	£15	0	0			
Interest on said bill for £50, from date of sequestration till it became due, . . .	0	3	11			
				15	3	11
Sum admitted, . . .				£67	2	9

A. B. Trustee.

II. C. D. and Company, manufacturers, Glasgow.

1. Open account for goods furnished to the bankrupt, from to , amounting to £ .
2. Oath of verity thereto by E. F., one of the partners of the said C. D. and Company, dated .

Deliverance by Trustee.

The trustee admits this claim.

A. B., Trustee.

III. G. H. and Company, merchants, Liverpool.

1. Account for goods furnished to the bankrupt on , amounting to £ .
2. Oath of verity by K. L., one of the partners of the said G. H. and Company, dated , claiming

a ranking as a preferable creditor for the above £ , on the allegation that the goods were sold and delivered to the bankrupt after he knew he was insolvent and was contemplating bankruptcy.

Deliverance by Trustee.

The trustee rejects this as a preferable claim, in respect the goods referred to were delivered to, and in possession of, the bankrupt, before he had resolved to suspend payments. He, however, admits the claimants to a ranking as ordinary creditors.

A. B., Trustee.

No. LVIII.

List of Creditors Ranked.

[*Date.*] List of creditors on the sequestrated estate of M. N., merchant, Glasgow, entitled to draw a dividend at the first statutory period.

Names of Creditors.	Preferable.	Ordinary.	Contingent.
1. A. B., merchant, Glasgow. Amount of debt, £100 0 0 Interest thereon till date of sequestration, . . . 2 0 0		£102 0 0	
2. C. D., manufacturer, Glasgow. Amount of debt, £200 0 0 Interest as above, 5 0 0	£205 0 0		
3. E. F., grocer, Glasgow. Amount of debt, £500 0 0 Interest as above, 20 0 0			
£520 0 0 But which claim is valued by the trustee at the sum of .			£50 0 0

No. LIX.

List of Creditors Rejected.

List of creditors on the sequestrated estate of M. N., merchant, Glasgow, whose claims have been rejected by the trustee, in whole or in part.

Names of Creditors.	Preferable.	Ordinary.	Contingent.
G. H., silk-mercer, Glasgow, .	£30 0 0		
I. J., merchant there, . . .		£100 0 0	
K. L., grocer there, . . .			£50 0 0

No. LX.

Gazette Notice intimating First Dividend.

(*Vide* Act 1856, s. 127.)

Notice of Dividend.

In the sequestration of C. D., merchant, F., A. B., accountant in Glasgow, trustee, hereby gives notice that a first dividend will be paid within his counting-house, , upon the day of .

A. B., Trustee.

Glasgow, 18 .

No. LXI.

Circular to Creditors intimating Dividend.

(*Vide* Act 1856, s. 127.)

[*Place and date.*]

Sir,—As trustee on the sequestrated estate of A. B., merchant in Glasgow, I hereby intimate that a dividend will be paid to those creditors whose claims have been admitted, at my chambers, , on the day of next.

The amount of your claim as ranked is £ . [*If claim rejected, state,*—I have also to intimate that your claim, which

amounts to £ , has been rejected; and a copy of my deliverance is annexed.]

The proposed dividend on claims admitted is per pound; but in the event of my deliverances on claims rejected being appealed, the dividend will be per pound, or thereby, provided no additional claims of creditors are lodged within the statutory period fixed by section 124 of the "Bankruptcy (Scotland) Act, 1856."

Of all which notice is hereby given. — I am, Sir, your obedient servant,

C. D., Trustee.

To M. N., merchant, L.

No. LXII.

Note of Appeal against Trustee's Deliverance.

(*Vide* Act 1856, s. 127.)

Note of appeal for A. B., merchant in Glasgow, in the sequestration of C. D., merchant in Glasgow.

That M. N., accountant in Glasgow, the trustee in the above sequestration, pronounced the following deliverance upon a claim for the appellant to be ranked as a creditor, and to draw a dividend from the said estate [*copy deliverance*].

That as the appellant considers himself aggrieved by the deliverance above copied, he respectfully appeals against the same to the Sheriff of the county of Lanark, and craves that the said deliverance may be recalled, and that the trustee be ordered to rank the appellant as a creditor on the said sequestrated estate, to the effect of entitling him to participate in the first dividend payable in this sequestration, and that to the extent of the appellant's claim, with the interest that has accrued on the dividend set apart for the appellant.

The appellant craves expenses against the trustee.

In respect whereof.

No. LXIII.

Scheme of Division.

(*Vide* Act 1856, s. 128.)

Scheme of division among the creditors in the sequestration of M. N., merchant, Glasgow, payable the day of eighteen hundred and .

Names of Creditors.	Claims Admitted.		Claims under Appeal.	
	Amount of Claim.	First Dividend of 5s. per pound.	Amount of Claim.	First Dividend of 5s. per pound.
1. A. B., merchant in Glasgow, . .	£50 0 0	£12 10 0		
2. C. D., manufacturer there, . .	39 5 0	9 16 3		
3. E. F., grocer there,			£100 0 0	£25 0 0
	£89 5 0	£22 6 3	£100 0 0	£25 0 0

N.B.—*As to principles of ranking*, vide *paragraph* 322, antea.

No. LXIV.

Petition for Acceleration of Dividend, Deliverance thereon, and Gazette Notice.

(*Vide* Act 1856, s. 133.)

Unto the Honourable the Sheriff of the county of Lanark, the petition of A. B., accountant in Glasgow, trustee on the sequestrated estates of D. E., merchant in Glasgow. [*Date.*]

The petitioner, A. B.,

Humbly showeth,—That on the day of the estates of the said D. E. were sequestrated by the Lord Ordinary officiating on the Bills [*or* by your Lordship], by virtue of the "Bankruptcy (Scotland) Act, 1856," and Acts explaining and amending the same.

That the petitioner has been elected and confirmed trustee on the said sequestrated estate, conform to act and warrant herewith produced.

That, at the meeting of creditors in the said sequestration held after the bankrupt's examination, the petitioner was directed by three-fourths in number and value of the cred-

itors present at the said meeting, to apply to your Lordship for authority to make the first dividend at the expiration of four months from the date of the deliverance actually awarding sequestration, in respect that all the funds of the estate have been recovered, and are ready for distribution, all conform to the minute of said meeting herewith produced.

May it therefore please your Lordship, on considering this petition, with the minute of said meeting of creditors, to grant authority to the petitioner to make the first dividend to the creditors on the sequestrated estates of the said D. E., at the expiration of four months from the date of the deliverance actually awarding sequestration: Farther, and in order to accelerate the various matters preparatory to the payment of said dividend, in terms of section 133 of said Statute first above cited, grant authority to the petitioner, immediately on the expiration of three months from the date of the deliverance actually awarding sequestration, to proceed and make up a state of the whole estate of the bankrupt, of the funds recovered by him, and of the property outstanding, and also an account of his intromissions, and generally of his management; and grant authority to the commissioners, within seven days after the expiration of the said three months, to meet and examine such state and account, audit the petitioner's accounts, and settle the amount of his commission, and authorise him to take credit for such commission in his accounts with the estate, and certify, by a writing under their hand, engrossed or copied in the sederunt-book, the balance due to or by the petitioner in his account with the estate as at the expiration of the said three months, and to do the other acts specified in section 125 of said Statute, and that in manner therein mentioned; and also grant authority to the said petitioner to examine the oaths and grounds of debt, and, in writing, reject or admit them, to complete the list of the creditors entitled to draw a dividend, and to do these and all the other acts specified in section 126 of said Statute, in manner therein mentioned, within the foresaid period of seven days: Farther, grant authority to the said petitioner to give notice in the 'Edinburgh Gazette' published next after the expiration of said seven days, of the time and place of the payment of the dividend, and also to notify to the creditors, on or before the first lawful day after the said seven days,

the various matters, and to do the other acts all specified in section 127 of the said Statute, and that in manner therein mentioned: And also grant warrant for immediate intimation, by advertisement in the 'Edinburgh Gazette,' and by notice posted to the creditors on the estate, of the acceleration of said dividend, in order that they may have their claims duly lodged, as to your Lordship may seem proper, all in terms of the said Statute first above mentioned.

According to justice.

Deliverance thereon.

Glasgow, 18 .—The Sheriff-Substitute having considered the foregoing petition, with the minutes of meeting of creditors therein referred to, grants warrant and authority all as craved.

Gazette Notice.

Sequestration of D. E., merchant in Glasgow.

A. B., accountant, Glasgow, trustee on the sequestrated estate of D. E., merchant in Glasgow, hereby intimates that the Sheriff of Lanarkshire has accelerated payment of the first dividend under this sequestration, by authorising the same to be made on the expiration of four months from the date of the deliverance actually awarding sequestration, and that accordingly the claims of the creditors must be duly lodged with the subscriber on or before the day of 18 , in order to participate in said dividend.

A. B., Trustee.

No. LXV.

Gazette Notice intimating Postponement of Dividend.

(*Vide* Act 1856, s. 134.)

A. B., accountant in Glasgow, trustee on the sequestrated estate of C. D., merchant in Glasgow, hereby intimates, that the commissioners have postponed a dividend until the recurrence of another statutory period.

A. B., Trustee.

Glasgow, 1st Nov. 1856.

No. LXVI.

Gazette Notice calling Meeting of Creditors to consider Offer of Composition.

A. B., accountant, Glasgow, trustee on the sequestrated estate of C. D. and Company, hatters, Glasgow, as a Company, and C. D., hatter, Glasgow, the only known partner of said firm, as such partner and as an individual, hereby calls a general meeting of the creditors, to be held within the office of , on the at o'clock noon, to take into consideration an offer of composition to be made by the said C. D.

A. B, Trustee.

Glasgow, 1st Nov. 1856.

No. LXVII.

Offer of Composition.

(*Vide* Minutes of Meeting of Creditors for Election of Trustee.)

N.B.—*Vide Act* 1856, *s.* 140, *note o, and s.* 143, *antea.*

No. LXVIII.

Gazette Notice intimating that offer of Composition had been made, and calling Meeting.

(*Vide* Act 1856, s. 137.)

A. B., accountant in Glasgow, trustee on the sequestrated estates of C. D., merchant in Glasgow, hereby intimates, that at the meeting of creditors held upon the day of last, the bankrupt offered to the creditors a composition on his whole debts of per pound, payable months after his final discharge, with security, and that the creditors present unanimously entertained said offer for consideration; and notice is hereby given that it will be decided upon at a meeting of the creditors, to be held within the counting-house of the trustee, , Glasgow, upon the day of , 18 , at o'clock noon.

A. B., Trustee.

Glasgow, , 18 .

No. LXIX.

Circular by Trustee, intimating Offer of Composition, and calling another Meeting.

(*Vide* Act 1856, s. 137.)

Glasgow, 18 .

Sir,—As trustee on the sequestrated estate of A. B., merchant in Glasgow, I hereby intimate that, at the general meeting of his creditors [*or* at a general meeting of his creditors called in terms of notice in the 'Edinburgh Gazette' of], held on the , the bankrupt made an offer of a composition of shillings per pound to his creditors, on his whole debts, payable [*according to offer*]; and he offered as his security. The bankrupt also offered to pay or provide for the whole expenses attending the sequestration and the remuneration to the trustee. The creditors present at said meeting having unanimously resolved that the offer and security should be entertained for consideration, another meeting of creditors will be held within , upon the day of , at o'clock, for the purpose of finally deciding thereon.

In terms of section 136 of the "Bankruptcy (Scotland) Act 1856," I annex an abstract of the state of the affairs, and of the valuation of the estate, so far as can be done, to enable the creditors to judge of the said offer and security.—I am, Sir, your obedient servant.

Abstract state of the Affairs and Valuation of the Estate.

Assets.

1.	Heritable property,	£
2.	Stock in trade,	
3.	Book debts,	
4.	Furniture,	
5.	Cash and bills receivable on hand,	
		£

Liabilities.

1.	Preferable,	£
2.	Ordinary,	
		£

Showing per pound, exclusive of the expenses of sequestration.

No. LXX.

Bond of Caution for Composition.

(*Vide* Act 1856, s. 138.)

We, A. B., merchant in Glasgow, and D. E., merchant in Glasgow, considering that upon the day of eighteen hundred and , the estates of the said A. B. were sequestrated by the Lord Ordinary officiating on the Bills, in terms of the "Bankruptcy (Scotland) Act, 1856," and Acts explaining and amending the same [*or* by the Sheriff of the county of Lanark]; that, at the statutory meeting of creditors, held at Glasgow upon the day of thereafter, H. I., accountant in J., was elected trustee in the sequestration, and his election was thereafter duly declared and confirmed in terms of the Statutes; that at the said meeting, I, the said A. B., offered a composition to my creditors, of 5s. per pound on my whole debts, payable in two equal instalments at three and six months after the date of my final discharge, and proposed me, the said D. E., as security for payment of the same; that a majority of the creditors in number and nine-tenths in value, present at said meeting, resolved that the offer and security should be entertained for consideration; that the trustee forthwith advertised in the 'Edinburgh Gazette,' a notice that said offer of composition had been so made and entertained, and that it would be decided upon at the meeting to be held after the examination of the bankrupt, and specified the hour, day, and place, and also transmitted by post letters to each of the creditors claiming on the estate, or mentioned in the bankrupt's state of affairs, containing a notice of said resolution, and of the day and hour at which, and the place where said meeting was to be held, and specifying the offer and security proposed, and giving an abstract of the state of affairs and of the valuation of the estate, so far as the same could be done, to enable the creditors to judge of said offer and security; that at the meeting after the examination of the bankrupt, a majority in number and nine-tenths in value of the creditors there assembled accepted said offer and security. And seeing it is necessary, in terms of the Statutes, that this bond of caution for payment of the composition should be executed, therefore I, the said A. B., as principal, and I, the said D. E., as cautioner, surety, and full debtor, for and with the said A. B., do hereby bind and oblige ourselves, jointly and severally, and our heirs, executors, and successors, to pay to each and all of the true and lawful creditors of me, the said A. B., the sum of 5s. per

pound of the several debts and obligations contracted by me, or for which I was liable, to said creditors respectively, at the date of the sequestration of the estates of me, the said A. B., and that by two equal instalments payable at three and six months respectively after the date of the final discharge of me, the said A. B., together with the legal interest of the said composition, from and after the said respective terms of payment, during the not-payment of the same, with a fifth part more of each payment in name of penalty, in case of failure in the punctual payment thereof. And I, the said A. B., bind and oblige myself and my foresaids, to free and relieve, and to keep harmless and scaithless, the said D. E. and his foresaids, of payment of all or any of the said sums, principal, interest, and penalty, and of all loss, damage, and expense which I, the said D. E., may incur by becoming cautioner, in manner foresaid. And we consent to the registration hereof in the Books of Council and Session, or others competent therein, to remain for preservation, and, if necessary, that letters of horning on six days' charge, and all other legal execution, may pass upon a decree to be interponed hereto, in form as effeirs; and to that effect we constitute our procurators, &c.

In witness whereof.

No. LXXI.

Report by Trustee on offer of Composition.

(*Vide* Act 1856, s. 138.)

Report by C. D., accountant in Glasgow, trustee on the sequestrated estate of A. B., merchant, Glasgow.

To the Sheriff of the county of Lanark.

In terms of the 138th section of the "Bankruptcy (Scotland) Act, 1856," the trustee reports to your Lordship that, at the second general meeting of creditors [*or* at a general meeting called for the purpose], held within the , upon the day of , at o'clock , for the purpose of deciding upon an offer of composition made by the bankrupt, the creditors, and mandatories for creditors then present, unanimously [*or as the case may be*] agreed to accept of a composition of in the pound, on their respective debts, as at the date of sequestration, payable , and approved of as security for payment of the said composition. The trustee herewith produces the minutes of said

meeting; together with the minute of the previous meeting of creditors when the offer was entertained; as also a copy of the 'Edinburgh Gazette' containing the requisite statutory notice and certificate of posting of the circulars to the creditors; and, lastly, the bond of caution by the said and the said as cautioner, dated the day of 18 .

The trustee also reports that his accounts have been audited by the commissioners, and the balance ascertained, and his remuneration fixed; and that the expenses attending the sequestration and said remuneration have been paid [*or* provided for], to the satisfaction of the trustee and commissioners.

Humbly reported by

C. D., Trustee.

Glasgow, , 18 .

No. LXXII.

Certificate by Trustee to enable Creditor to recover Composition.

(*Vide* Act 1856, s. 138, note *e.*)

[*Place and date.*]

I, A. B., accountant in C., lately trustee in the sequestration of D. E., merchant in C., do hereby certify that F. G., manufacturer, C., was duly ranked as a creditor on the estate for a debt amounting to £ [*or* that F. G. was given up by the bankrupt, in his state of affairs, as a creditor on the estate for a debt amounting to £ ; *or* that F. G. duly lodged in the sequestration an oath and claim for a debt of £ , and that in the acceptance of an offer of composition, upon which the bankrupt was discharged as after mentioned, he was admitted without question to be reckoned as a creditor for said debt], and that the said sequestration was closed by composition, and the bankrupt discharged by the Lord Ordinary officiating on the Bills [*or* Sheriff of the county of L.] on the day of

A. B., Trustee.

N.B.—*This certificate, with an extract of the bond, will warrant letters of horning.*

No. LXXIII.

Deliverance Approving of Offer of Composition.

(May be written on trustee's report.)

Glasgow, 18 .—Having considered the foregoing report, with the minute of meeting of creditors, and bond of caution therein referred to, and no appearance or objection being made by any of the creditors, finds that the offer of composition, with the security therein mentioned, has been duly made, and is reasonable, and has been accepted by a majority in number, and four-fifths [*or* nine-tenths, *as the case may be*] of all the creditors or mandatories of creditors assembled at said meeting; therefore approves of the said offer, with the security; but before granting the discharge, appoints the bankrupt, A. B., to appear and make a declaration, in terms of the Statutes.

No. LXXIV.

Deliverance Approving of Offer of Composition made by Executrix.

Glasgow, 1st November 1856.—Having considered the foregoing petition, with the report by the trustee, minutes of meeting of creditors, and bond of caution therein referred to, finds that the offer of composition, with the security mentioned in the petition, has been duly made, and is reasonable, and has been accepted by a majority in number and four-fifths in value of the creditors or mandatories of creditors assembled at the said meeting; therefore approves of said offer, with the security; but, before granting a discharge, appoints the petitioner to appear and make a declaration, in terms of the Statutes.

No. LXXV.

Declaration by Bankrupt.

At Glasgow, the 1st day of November 1856. In presence of , Sheriff-Substitute of Lanarkshire: Compeared the bankrupt, who, being interrogated, declares that he has made a full and fair surrender of his estate, and has not granted or promised any preference or security, or made or promised any payment, or entered into any secret or

collusive agreement or transaction to obtain the concurrence of any of his creditors to the offer of composition made by him to them, or to the security for the same. And this he declares to be truth.

No. LXXVI.

Declaration by Executrix.

At Glasgow, the 1st day of November 1856. In presence of , Esquire, Sheriff-Substitute of Lanarkshire: Appeared Mrs A. B. or D., the petitioner, widow of the deceased C. D., the bankrupt, and executrix decerned to him, who, being interrogated, declares that, to the best of her knowledge and belief, a full and fair surrender of the estates of the said deceased has been made under the sequestration; and the declarant has not granted or promised any preference or security, or made or promised any payment, or entered into any secret or collusive agreement or transaction to obtain the concurrence of any of the creditors to the offer of composition made by her to them, or to the security for the same. And this she declares to be truth.

No. LXXVII.

Discharge to Bankrupt.

Glasgow, 1st November 1856.—The Sheriff-Substitute having advised the declaration made, of this date, by the bankrupt, A. B., merchant in Glasgow, finds the same satisfactory, discharges the said A. B. of all debts and obligations contracted by him, or for which he was liable, at the date of the sequestration [. 18]; declares the sequestration to be at an end, and the bankrupt reinvested in his estate; reserving always the claims of the creditors for the composition against him and the cautioner; appoints the bond of caution to be recorded in the Sheriff Court Books of Lanarkshire at Glasgow; and allows an act and warrant to go out and be extracted, all in terms of the "Bankruptcy (Scotland) Act, 1856," and Acts explaining and amending the same.

No. LXXVIII.

Discharge to the Partners of a Company, as Partners and as Individuals.

Glasgow, 1st Nov. 1856.—The Sheriff-Substitute having advised the declaration made, of this date, by the bankrupts A. B. and C. D., merchants in Glasgow, the individual partners of the firm of A. B. and Company, merchants there, finds the same satisfactory, discharges the said A. B. and C. D. of all debts and obligations contracted by them, or for which they were liable, either as partners foresaid or as individuals, at the date of the sequestration [18]; declares the sequestration to be at an end, and the bankrupts reinvested in their estates; reserving, &c. [*as before*].

No. LXXIX.

Discharge to the Partners of a Company, as Partners.

Having advised the declaration, &c. [*as in the first example*], discharges the said A. B. and C. D. of all debts and obligations contracted by them, or for which they were liable, as partners foresaid, at the date of the sequestration [18]; declares the sequestration to be at an end, so far as regards the said A. B. and C. D., as partners foresaid, and the said A. B. and C. D. reinvested in their estates, as partners foresaid; reserving always the claims of the creditors, &c. [*as before*].

No. LXXX.

Discharge to the Partners of a Company, as Individuals only.

Having advised the declaration made, of this date, by the bankrupts, A. B. and C. D., merchants in Glasgow, the individual partners of the firm of A. B. and Company, merchants there, finds the same satisfactory; discharges the said A. B. and C. D. of all debts and obligations contracted by them, or for which they were liable, as individuals, at the date of the sequestration [18]; declares the sequestration to be at an end, so far as regards the said A. B. and C. D. as individuals, and them reinvested in their individual estates; reserving always the claims of the creditors, &c. [*as before*].

No. LXXXI.

Discharge to one Partner of a Company, as Partner and as an Individual.

Glasgow, 1st Nov. 1856.—Having advised the declaration made, of this date, by the bankrupt, A. B., merchant in Glasgow, one of the individual partners of the firm of A. B. and Company, merchants there, finds the same satisfactory; discharges the said A. B. of all debts and obligations contracted by him, or for which he was liable, either as partner foresaid or as an individual, at the date of the sequestration [18]; declares the sequestration to be at an end, so far as regards the said A. B., as partner foresaid and as an individual, and him reinvested in his estates as partner foresaid, and as an individual; reserving always the claims of the creditors, &c. [*as before*].

No. LXXXII.

Discharge to a Partner offering a Composition on the Company's Estate.

Glasgow, 1st Nov. 1856.—Having advised the declaration made, of this date, by the bankrupt, A. B., merchant in Glasgow, one of the individual partners of the firm of A. B. and Company, merchants there, finds the same satisfactory; discharges the said A. B. of all debts and obligations contracted by him, or for which he was liable, either as partner foresaid or as an individual, at the date of the sequestration [18]; declares the sequestration to be at an end, so far as regards the said A. B. as partner foresaid or as an individual, and him reinvested in his estate as partner foresaid and as an individual, reserving to him to obtain from the trustee a conveyance of, or otherwise to obtain himself invested in, the whole estates of the said company, in terms of his offer, and reserving always the claims of the creditors, &c. [*as before*].

N.B.—*Vide Act* 1856, *s.* 140, *note n, antea.*

No. LXXXIII.

Discharge to an Executrix.

Glasgow, 18 .—Having advised the declaration made, of this date, by the petitioner, Mrs A. B. or D., residing in Street, Glasgow, widow of the deceased C. D., merchant in Glasgow, the bankrupt, and decerned executrix *dative qua*, relict to the said deceased, conform to decree of the Commissary of Lanarkshire, dated the day of , finds the same satisfactory; discharges the petitioner, and the representatives and estates of the said deceased C. D., of all debts and obligations contracted by him, or for which he was liable at the date of his death, or for the payment of which his estates were liable at the date of the sequestration of the same [18]; declares the sequestration to be at an end, and for all obstacles which it otherwise might have offered, declares the petitioner now entitled to complete her title, and have herself confirmed executrix *dative qua*, relict to her said deceased husband, or *omne habile modo* to take up and obtain herself invested in the bankrupt's moveable estate, the said deceased having left no heritable estate; reserving always the claims of the creditors, &c. [*as before*].

No. LXXXIV.

Discharge to the Heir of a Bankrupt.

Glasgow, 18 .—The Sheriff-Substitute having advised the declaration made, of this date, by A. B. [*designation*], eldest son, heir-at-law, and successor to the deceased C. D. [*designation*], finds the same satisfactory; discharges the said A. B., and the representatives and estate of the said deceased, of all debts and obligations contracted by the said C. D., or for which he was liable at the date of his death, or for which his estates were liable at the date of the sequestration of the same [18]; declares the sequestration to be at an end, and for all obstacles which it might otherwise have offered, declares the said A. B. now entitled, *omne habile modo*, to take up and obtain himself invested in the bankrupt's estates, or to obtain a conveyance thereof from the trustee, in terms of the conditions of the offer; reserving always the claims of the creditors, &c.

No. LXXXV.

Discharge to a Successor where the Bankrupt has died after Sequestration.

The only differences in this case are in the declaration, where the successor says, "that to the best of his knowledge and belief, the bankrupt, previous to his death, had made a full and fair surrender of his estates, and the declarant has not granted or promised," &c. [*as before*]; and in the discharge, where all debts and obligations due at the date of the sequestration only, and not at the date of death, are discharged.

No. LXXXVI.

Gazette Notice of Meeting of Creditors for Winding up Estate.

(*Vide* Act, 1856, s. 136.)

A. B., accountant in Glasgow, trustee on the sequestrated estates of C. D., merchant in Glasgow, hereby intimates to the creditors on the said sequestrated estates, that twelve months having now elapsed from the date of the deliverance actually awarding sequestration, and it appearing to the trustee and commissioners on the estate expedient to sell the heritable and moveable estates not disposed of and any interest which the creditors have in the outstanding debts and consigned dividends, they hereby fix the day of , at o'clock, within the trustee's writing chambers, No. Street, Glasgow, for holding a meeting of the creditors to take the same into consideration.

A. B., Trustee.

Glasgow, 18 .

No. LXXXVII.

Petition for Trustee's Discharge where Estate wound up by Composition Contract.

(*Vide* Act 1856, s. 142, note *a*.)

[*Date.*] Unto the Honourable the Sheriff of the county of Lanark.

The petition of A. B., accountant in Glasgow, trustee on the sequestrated estates of D. E., merchant in Glasgow.

The petitioner A. B.,

Humbly showeth,—That on the day of the estates of the said D. E. were sequestrated by the Lord Ordinary officiating on the Bills [*or* by your Lordship], by virtue of the "Bankruptcy (Scotland) Act, 1856," and Acts explaining and amending the same.

That at the first general meeting of creditors in the sequestration, the petitioner was duly elected trustee, and, having proposed F. G., merchant in Glasgow, as his security, the meeting unanimously approved of the same, and fixed the sum to which the security should extend at £500 sterling.

That the petitioner's election having been declared by the deliverance of your Lordship, the petitioner along with the said F. G., duly executed and lodged with the Clerk of your Lordship's Court, a bond of caution, in terms of the Statutes.

That the bankrupt, having made an offer of composition to his creditors, with the security of M. N., manufacturer in Glasgow, and the said offer and security having been entertained and ultimately accepted, your Lordship, of date the day of , pronounced a deliverance discharging the bankrupt, declaring the sequestration at an end, and reinvesting the bankrupt in his estates.

That in respect the commissioners on said estate duly audited the petitioner's accounts prior to said discharge being pronounced, and ascertained that there was no balance due by him to the estate, conform to docqueted accounts herewith produced, and in respect of the consent of the bankrupt and his cautioner to this petition, the petitioner respectfully applies to your Lordship for exoneration, and for an order to get up the said bond.

May it therefore please your Lordship, on considering this petition, to exoner and discharge the petitioner, the said A. B., of all his actings and intromissions as trustee on the sequestrated estates of the said D. E., and grant warrant to, and ordain the Clerk of your Lordship's Court to deliver up to the petitioner his said bond of caution, all in terms of said Statutes, and do otherwise.

According to justice.

Deliverance thereon.

Glasgow, 18 .—Having considered this petition, consents by the bankrupt and the cautioner for the composition, both now produced, and in respect the trustee has transmitted to the Accountant in Bankruptcy the sederunt-book,

conform to acknowledgment produced, exoners and discharges the petitioner, the said A. B., accountant in Glasgow, of all his actings and intromissions as trustee on the said sequestrated estate, and grants warrant to, and ordains the Clerk of Court to deliver up to the petitioner his bond of caution; and allows an act and warrant to go out and be extracted, all in terms of the "Bankruptcy (Scotland) Act, 1856."

No. LXXXVIII.

Petition for Bankrupt's Discharge without a Composition.

(*Vide* Act 1856, s. 146.)

[*Date.*] Unto the Honourable the Sheriff of the county of Lanark.
The petition of A. B., merchant in Glasgow.

The petitioner, A. B.,

Humbly showeth,—That on the day of the whole estates, wherever situated, of the petitioner, were sequestrated by the Lord Ordinary officiating on the Bills [*or* by your Lordship], in terms of the "Bankruptcy (Scotland) Act, 1856," and Acts explaining and amending the same, and at the statutory meeting for the election of trustee, held upon the day of , D. E., accountant in C., was unanimously elected trustee on the sequestrated estate.

That six months have now expired from the date of the deliverance actually awarding sequestration, and the petitioner is desirous of being finally discharged of all debts contracted by him before the date of the sequestration, and has, accordingly, procured the concurrence in this petition of a majority in number and four-fifths in value of the creditors, who have produced oaths in the sequestration, all conform to the trustee's certificate, and consent of the creditors, herewith produced.

That the trustee has, in terms of the Statute first above mentioned, prepared a report with regard to the conduct of the petitioner, and as to how far he has complied with the provisions of the said Act, which report is herewith produced.

May it therefore please your Lordship, on considering this petition, to order the same to be intimated in the 'Edinburgh Gazette,' and to each of the creditors in the sequestration. And if, at the distance of not less than twenty-one days from the publication of such intimation, there be no appearance to oppose the same,

or, in the event of appearance being made, and objections stated against granting the discharge, if the same be repelled, to pronounce a deliverance finding the petitioner entitled to a discharge. And, on again considering this petition, with the declaration or oath made by the petitioner, in terms of said Statute, and on being satisfied with said oath or declaration, pronounce a deliverance discharging the petitioner of all debts and obligations contracted by him, or for which he was liable at the date of the sequestration, all in terms of s. 146 of the Statute first above-mentioned, and do otherwise as to your Lordship shall seem proper.

According to justice.

No. LXXXIX.

Report by the Trustee on Conduct of Bankrupt.

(*Vide* Act 1856, s. 146.)

Report by A. B., accountant in Glasgow, trustee on the sequestrated estate of C. D., merchant in Glasgow.

The trustee has to report, in terms of the 146th section of the "Bankruptcy (Scotland) Act, 1856," that the aforesaid C. D. has complied with all the provisions of the Statute; that he believes that the bankrupt has made a fair discovery and surrender of his estate; that he has attended the diets of examination, and has not, so far as known to the trustee, been guilty of any collusion, but that his bankruptcy has arisen from innocent misfortunes [*or* losses in business], and not from culpable or undue conduct.

A. B., Trustee.

Glasgow, 18 .

No. XC.

Concurrence by Creditors to Discharge of Bankrupt without Composition.

(*Vide* Act 1856, s. 146.)

Glasgow, 18 .

We, being creditors, or mandatories for creditors, of A. B., merchant in Glasgow, having seen the report by the trustee

on his sequestrated estate, dated the day of 18 , do hereby concur in a petition to be presented by him to the Lord Ordinary, or to the Sheriff of , to be finally discharged of all debts contracted by him before the date of the sequestration of his estates, in terms of and under the provisions of the "Bankruptcy (Scotland) Act, 1856," and Acts explaining and amending the same.

No. XCI.

Gazette Notice of Petition by Bankrupt for Discharge without Composition.

(*Vide* Act 1856, s. 146.)

To the creditors on the sequestrated estates of A. B., merchant in Glasgow.

By virtue of an order of the Sheriff-Substitute of Lanarkshire, A. B., above designed, hereby intimates that he has presented a petition to the Sheriff of Lanarkshire, at Glasgow, to be finally discharged of all debts contracted by him before the date of the sequestration of his estates, in terms of the Statutes. A. B.

Glasgow, 18 .

No. XCII.

Deliverances finding Bankrupt entitled to Discharge.

First Deliverance.

Glasgow, 18 .—Appoints this petition to be intimated in the 'Edinburgh Gazette,' and by circular to each creditor, in terms of the Statute. [*Where it is an application after two years, and without consent, add:* Farther, appoints a copy of the said petition, and of the trustee's report on the bankrupt's conduct, produced herewith, and of this deliverance, to be transmitted by post to the Accountant in Bankruptcy, that he may have an opportunity of reporting whether the bankrupt has fraudulently concealed any part of his estate or effects, or whether he has wilfully failed to comply with any of the provisions of the "Bankruptcy (Scotland) Act, 1856," with certification that if he makes no report within twenty-one days after the date of such transmission, he will be held as admitting that he has nothing unfavourable to the bankrupt to report on these two heads.]

Second Deliverance.

Glasgow, 18 .—Having resumed consideration of the foregoing petition, with the report by the trustee on the bankrupt's conduct [concurrence by the creditors, and relative certificate by the trustee], and having seen the 'Edinburgh Gazette' of the last, containing the intimation ordered by the previous interlocutor, and certificate of the like intimation having been posted to each of the creditors, in respect twenty-one days have now elapsed since the publication and posting of the said intimations, and that no appearance has been made to oppose the prayer of the petition, finds the bankrupt petitioner entitled to his discharge; but before granting the same, appoints him to appear and make a declaration in terms of the Statutes.

No. XCIII.

Declaration by Bankrupt.

At Glasgow, the day of , eighteen hundred and fifty years, in presence of , Esquire, advocate, Sheriff-Substitute of Lanarkshire,—

Appeared the bankrupt petitioner, A. B., who, being interrogated, declares that he has made a full and fair surrender of his estates, and has not granted or promised any preference or security, or made or promised any payment, or entered into any secret or collusive agreement or transaction, to obtain the concurrence of any of the creditors to his discharge. And this he declares to be truth.

No. XCIV.

Discharge of Bankrupt without Composition.

Glasgow, 18 .—Having advised the declaration made, of this date, by the bankrupt petitioner, A. B., merchant in Glasgow, finds the same satisfactory; discharges the said A. B. of all debts and obligations contracted by him, or for which he was liable at the date of the sequestration [18], and allows an act and warrant to go out and be extracted, all in terms of the "Bankruptcy (Scotland) Act, 1856," and Acts explaining and amending the same.

No. XCV.

Abbreviate, &c., of Bankrupt's Discharge.

(*Vide* Schedule A, annexed to Act 1857, *antea.*)

No. XCVI.

Petition of Multiplepoinding against Creditor who has obtained Preference for his Concurrence in Bankrupt's Discharge.

(*Vide* Act 1856, s. 150.)

In the Sheriff Court of shire, at ,

A. B., merchant in G., pursuer;

Against

C. D., manufacturer in G., a creditor in the sequestration of E. F., merchant in G., and all the creditors who were ranked, or were entitled to be ranked, in the sequestration, and have not received payment of their debts, and who shall lodge claims in this process—defenders.

The above-named pursuer submits to the Court the Condescendence and Note of Pleas in Law hereto annexed, and prays the Court

To find that he is holder of a fund *in medio*, amounting to the sum of £300 sterling, and consisting of (1) the sum of £100 sterling, being double the value or amount of a preference, gratuity, security, payment, or other consideration granted, made, or promised by the said E. F. to the pursuer for concurring *qua* creditor in the said E. F.'s discharge in his sequestration, or for facilitating or obtaining said discharge under the "Bankruptcy (Scotland) Act, 1856;" and (2) of the sum of £200, being the amount of the pursuer's debt claimed by him in the said sequestration, conform to his oath lodged by him with the trustee, and that the pursuer is only liable in once and single payment of the said fund, and is entitled on payment or consignation to be exonerated thereof: And that decree should issue in favour of the party or parties who shall be found to have best right to the fund *in medio*, and according to their respective rights and interests. The real raiser hereof is C. D., above designed.

Condescendence.

1. That on the day of the estates of the said D. E. were sequestrated by the Lord Ordinary officiating on the Bills by virtue of the "Bankruptcy (Scotland) Act, 1856," and Acts explaining and amending the same.

2. That the bankrupt having, at a meeting of his creditors, held on or about the day of , made an offer of composition to his creditors with the security of M. N., manufacturer in G., and the said offer and security having been entertained at said meeting, and ultimately accepted by the creditors at another meeting, held on the day of , the Sheriff of the shire of pronounced a deliverance discharging the bankrupt, declaring the sequestration at an end, and reinvesting the bankrupt in his estates.

3. That the said C. D. finds and avers that, in carrying through said composition-settlement, the bankrupt entered into a secret and collusive agreement and transaction with the said A. B., the pursuer, whereby the pursuer on or about the day of , obtained from the bankrupt a preference or payment or consideration amounting to the sum of £50, for concurring in and facilitating the bankrupt's discharge.

4. That the said C. D. has not received payment of his debt against the bankrupt.

Note of Pleas in Law.

1. The pursuer having been guilty of a secret and collusive transaction with the bankrupt, whereby he has obtained a preference for concurring in the bankrupt's discharge, is liable in payment of the sums concluded for as above.

2. That in terms of the "Bankruptcy (Scotland) Act, 1856," s. 150, the prayer of the petition ought to be granted.

R. S., No. Street (Place),
Law Agent of the Real Raiser.

No. XCVII.

Gazette Notice calling Meeting to consider as to Trustee's Discharge.

A. B., accountant in Glasgow, trustee on the sequestrated estate of C. D., merchant in Glasgow, hereby calls a meeting of the creditors to be held within his office, on the day of at o'clock , to consider as to an application to be made for the trustee's discharge.

A. B., Trustee.

Glasgow, 18 .

No. XCVIII.

Circular to Creditors in reference to Trustee's Discharge.

[*Place and date.*]

SIR,—As trustee on the sequestrated estate of , I hereby call a general meeting of the creditors on said estate, to be held within , upon the day of next, at o'clock , to consider as to an application to be made for my discharge as trustee aforesaid.—I am, Sir, your obedient servant, (Signed)

No. XCIX.

Petition for Trustee's Discharge after Final Division of Funds, and Deliverance thereon.

(*Vide* Act 1856, s. 152.)

[*Date.*] Unto the Honourable the Sheriff of the county of Lanark. The petition of A. B., accountant in Glasgow, trustee on the sequestrated estates of D. E., merchant in Glasgow.

The petitioner, A. B.,

Humbly showeth.—That on the day of the estates of the said D. E. were sequestrated by the Lord Ordinary officiating on the Bills [*or* by your Lordship], by virtue of the "Bankruptcy (Scotland) Act, 1856," and Acts explaining and amending the same.

That the petitioner was elected trustee in said sequestration at the meeting of creditors held on the day of , and his election was thereafter duly declared and confirmed, as shown by the act and warrant herewith produced.

That a final division of the funds of the estate having taken place, the petitioner called a meeting of the creditors by an advertisement in the 'Edinburgh Gazette,' to be held not sooner than twenty-one days after said publication, specifying the time, place, and purpose of holding the meeting, and by letters addressed by post to every creditor who had produced an oath as aforesaid, to consider as to an application for his discharge, and at said meeting the petitioner laid before the creditors the sederunt-book and accounts, with a list of unclaimed dividends, and the creditors then declared themselves satisfied with his conduct as trustee, all conform to Gazette and minutes of meeting herewith produced.

That the petitioner, in terms of the first-mentioned Statute, transmitted the sederunt-book to the Accountant in Bankruptcy, who thereupon directed the petitioner to deposit the unclaimed dividends in the same bank in which money received by him was lodged under the provisions of the said Act; and the petitioner having forthwith transferred the whole dividends not then claimed to said bank, which have been there entered in an account kept under the title of "Account of Unclaimed Dividends," the petitioner now respectfully makes the following application for his discharge.

May it therefore please your Lordship, on advising this petition and hearing any creditor, if any should appear, to pronounce decree of exoneration and discharge in favour of the petitioner as trustee foresaid, and grant warrant to the Clerk of Court to deliver up to the petitioner the bond of caution lodged by him, all in terms of s. 152 of the Statute first above-mentioned, and do otherwise as to your Lordship shall seem proper.

According to justice.

Deliverance thereon.

Glasgow, 18 .—Having considered the foregoing petition, and seen the 'Edinburgh Gazette,' and minutes of meeting of creditors therein referred to, as also the acknowledgment by the Accountant in Bankruptcy for the sederunt-book, and receipt for the unclaimed dividends, and no party appearing to object, exoners and discharges the petitioner, A. B., accountant in Glasgow, of his whole actings and intromissions as trustee on the sequestrated estate of C. D., merchant in Glasgow, and grants warrant to, and authorises the Clerk of Court to deliver up to the said A. B. the bond of caution for him as trustee foresaid, and allows an act and warrant to go out and be extracted, all in terms of the "Bankruptcy (Scotland) Act, 1856," and Acts explaining and amending the same.

No. C.

Petition to uplift Dividend.

(*Vide* Act 1856, s. 153.)

Unto the Honourable the Lord Ordinary officiating on the Bills. The petition of A. B., merchant in Glasgow, a creditor on the sequestrated estate after-mentioned, [*Date.*]

Humbly showeth,—That on the day of the estates of D. E., merchant in Glasgow, were sequestrated in terms of the "Bankruptcy (Scotland) Act, 1856," and Acts explaining and amending the same, and F. G. was duly elected and confirmed as trustee thereon.

That, prior to the trustee obtaining his discharge, he transferred the whole unclaimed dividends in the sequestration to the Bank of Scotland, and, *inter alia*, an unclaimed dividend due to the petitioner, amounting to £ , which is duly entered in the petitioner's name in the account of unclaimed dividends kept by the bank.

That, in consequence of absence from this country, the petitioner was unable to claim said dividend prior to the trustee's discharge, which was granted on the day of .

The petitioner herewith produces a certificate of his ranking under the hands of the trustee.

May it therefore please your Lordship to grant warrant to the Bank of Scotland for payment to the petitioner of the said unclaimed dividend, amounting to £ , falling to the petitioner as a creditor on the sequestrated estate of the said D. E., all in terms of s. 153 of the Statute first above-mentioned, and do otherwise as to your Lordship may seem proper.

According to justice.

No CI.

Report by Trustee to Sheriff of Resolution of Creditors that Bankrupt only entitled to Decree of Cessio.

(*Vide* Act 1856, s. 168.)

Report by A. B., accountant in Glasgow, trustee on the sequestrated estate of C. D., merchant in Glasgow.

To the Sheriff of the county of Lanark.

In terms of the 168th section of the "Bankruptcy (Scotland) Act, 1856," the trustee reports to your Lordship that, at a general meeting of creditors held within the , upon the day of 18 , at o'clock , called for the purpose, the creditors and mandatories for creditors present were unanimously of opinion that the estate was not likely to yield free funds for division among the ordinary creditors, after payment of preferable debts and expenses, beyond one hundred pounds, and accordingly resolved that the

bankrupt should only be entitled to apply for and obtain a decree of cessio, and should have no right to a discharge in the sequestration.

Humbly reported by

A. B., Trustee.

[*Date.*]

No. CII.

Note of Appeal to Sheriff against Resolution of Creditors.

(*Vide* Act 1856, s. 169.)

Note of appeal for A. B., merchant in Glasgow, in the sequestration of C. D., merchant in Glasgow. [*Date.*]

That a meeting of creditors in the above sequestration was held at Glasgow, upon the day of , when the following resolution was adopted by a majority of the creditors [*copy resolution*].

The appellant is a creditor in the said sequestration, and as he considers himself aggrieved by the resolution above quoted, he respectfully appeals against the said resolution to the Sheriff of the county of Lanark, and craves that the said resolution may be recalled.

The appellant also craves expenses.

In respect whereof.

N.B.—*As to service,* vide *s.* 169, *note h.*

No. CIII.

Note of Appeal from Sheriff to Court of Session.

(*Vide* Act 1856, s. 170.)

(Copy deliverance appealed against.)

Unto the Right Honourable the Lords of Council and Session, note of appeal for A. B., merchant in Glasgow. [*Date.*]

That in the process of sequestration of the estates of C. D., merchant in Glasgow, under the "Bankruptcy (Scotland) Act, 1856," and Acts explaining and amending the same, presently depending in the Sheriff Court of Lanarkshire, at Glasgow, the Sheriff-Substitute (, Esquire) was, of

Nov. 1, 1856. this date, pleased to pronounce the deliverance above copied, which the appellant respectfully brings under the review of your Lordships, in terms of s. 170 of the Statute first above-mentioned.

May it therefore please your Lordships to recall the deliverance complained of, find the appellant entitled to the expenses of process, both in your Lordships' Court and in the Sheriff Court, and do otherwise as to your Lordships shall seem proper.

According to justice.

No. CIV.

Petition for Warrant to open Post Letters.

(*Vide* Act 1856, s. 179.)

[*Date.*] Unto the Honourable the Sheriff of the county of Lanark.

A. B., accountant in Glasgow, trustee on the sequestrated estates of D. E., merchant in Glasgow, *v.* D. E., above designed.

The petitioner, A. B.,

Humbly showeth,—That on the day of the whole estates, wherever situated, of the said D. E., were sequestrated by the Lord Ordinary officiating on the Bills [*or* by your Lordship], by virtue of the "Bankruptcy (Scotland) Act, 1856," and Acts explaining and amending the same.

That the petitioner was elected trustee in said sequestration at the meeting of creditors held on the day of , and his election was thereafter duly declared and confirmed, as shown by the act and warrant herewith produced.

That, since the date of the sequestration, the bankrupt has left this country, and gone to the United States of America, or elsewhere abroad, and that without any notice to, or permission from, the petitioner; and, farther, that the bankrupt has not attended the diet fixed for his examination by your Lordship's warrant.

That, in these circumstances, the petitioner considers it proper to secure all letters coming through the post-office addressed to the bankrupt, in order that the petitioner may, if possible, get some information of the current transactions of the bankrupt, and therefore he humbly prays that it

May please your Lordship to order that, for a period not exceeding three months from the date of the order, all letters addressed to D. E., the bankrupt, shall be delivered by the Postmaster-General, or the officers acting under him, to the Sheriff Clerk or the petitioner, to be opened in presence of your Lordship, after written notice to the bankrupt to attend, if within Scotland; and in case the letters shall relate, in whole or in part, to the estate, that they be placed in such custody as your Lordship may direct. All in terms of s. 179 of the Statute first above-mentioned.

According to justice.

Deliverance thereon.

Glasgow, 18 .—Having considered the foregoing petition, grants warrant to her Majesty's Postmaster-General, or other officers acting under him, to deliver to the petitioner any letters addressed to the bankrupt, D. E., which may now be in the post-office of Glasgow, or which may arrive there at any time within three months from this date, to be opened in presence of the Sheriff, after written notice to the bankrupt to attend, if within Scotland, all as craved.

No. CV.

Vidimus of the ordinary steps of Procedure in a Sequestration.

Jan. 1. Petition presented, and sequestration awarded.
„ 3. Abbreviate of petition and deliverance presented or transmitted to keeper of Register of Inhibitions.
„ 4. Notices inserted in Edinburgh and London Gazettes.
„ 11. State of affairs made up by bankrupt, and produced at first meeting.
„ „ Meeting of creditors for election of trustee and commissioners.
„ „ Proceedings reported, and election declared.
„ 12. Bond of caution for trustee lodged.
„ „ Election of trustee confirmed; act and warrant issued, and copy thereof transmitted to Accountant in Bankruptcy.
„ 13. Abbreviate of adjudication lodged by trustee.

Jan. 13. Trustee takes possession, and makes up inventory, and transmits same to accountant; also proceeds in the general execution of his duties.
„ „ Petition presented for bankrupt's examination, and deliverance granted.
„ 15. Notice inserted in 'Edinburgh Gazettee' of diet for examination, and of second general meeting of creditors.
„ 21. Examination of bankrupt.
„ 27. Trustee prepares report to next meeting of creditors.
„ 29. Second general meeting of creditors.
May 1. Last day for lodging claims for first dividend.
„ „ Trustee's states and accounts made up.
„ 3. Same examined and audited by commissioners.
„ 4. Trustee adjudicates on claims.
„ 15. Gazette notice, letters intimating first dividend.
June 30. Scheme of division made up by trustee.
July 2. First dividend paid.
„ „ Gazette notice, and intimation by letters of trustee's application for discharge.
„ 24. Meeting of creditors to consider as to same.
„ 25. Sederunt-book transmitted to accountant.
„ 26. Unclaimed dividends directed to be deposited in bank.
„ 27. Unclaimed dividends deposited.
„ „ Petition for discharge, and deliverance thereon.

No. CVI.

Estimate of Law Expenses in a Sequestration.

I.—*Estimate of Expenses of the ordinary Procedure in a Sequestration in the Sheriff-Court, which terminates in a Dividend.*

Meeting with bankrupt and concurring creditor, receiving instructions to apply for sequestration (including mandate),	£0	6	8
Drawing affidavit by concurring creditor, 1 sheet and copy,	0	6	0
Drawing petition for sequestration, 3 sheets,	1	10	0
Fair copy,	0	3	0
Drawing inventory of productions, 1 sheet 1s. 6d., and copy 1s.,	0	2	6
Attendance obtaining sequestration,	0	3	6
Drawing abbreviate of sequestration, and copy,	0	5	0
Transmitting same to be recorded in Register of Inhibitions,	0	3	4
Carry forward,	£3	0	0

Brought forward,	£3	0	0
Paid Sheriff-Clerk's fees for deliverances, &c.,	0	11	8
Drawing advertisement of sequestration, and of meetings for election of trustee, 1 sheet and copy,	0	6	0
Agency ordering insertion in Edinburgh and London Gazettes,	0	6	8
Paid advertising in Gazettes, say	1	18	0
Paid for sederunt book,	0	3	6
Attending meeting for election of trustee and commissioners, and drawing minutes, 4 sheets (*or 6s. 8d. per hour*),	1	0	0
Paid for the use of room,	0	5	0
Agency lodging minutes of meeting and oaths of creditors with Sheriff-Clerk,	0	3	4
	£7	14	2
Agency obtaining deliverance by Sheriff, declaring election,	0	3	6
Paid Sheriff-Clerk's dues of deliverance,	0	2	6
Paid Sheriff-Clerk for bond of caution for trustee,	0	2	6
Agency getting bond of caution signed by trustee and his cautioner, and lodging same,	0	6	8
Agency obtaining confirmation of trustee, 3s. 6d., and declaration of election of commissioners, 3s. 6d.,	0	7	0
Paid Sheriff-Clerk's fees of confirmation, act, and warrant, &c., say	0	12	2
Agency taking out act and warrant,	0	3	6
Drawing abbreviate of trustee's confirmation and copy,	0	5	0
Transmitting same for recording,	0	3	4
Paid keeper of register of abbreviates of adjudications for entering same,	0	1	0
Drawing petition for renewal of bankrupt's protection,	0	5	0
Fair copy,	0	1	0
Agency procuring deliverance,	0	3	6
Paid Sheriff-Clerk fees,	0	1	0
Drawing petition to Sheriff to fix diet for bankrupt's examination, 1 sheet,	0	5	0
Fair copy,	0	1	0
Agency procuring same,	0	3	6
Sheriff-Clerk's fee,	0	2	6
Drawing advertisement of trustee's election, bankrupt's examination, &c., 1 sheet and copy,	0	6	0
Ordering insertion in 'Edinburgh Gazette,'	0	3	4
Paid advertising, say	0	10	6
Consultation with trustee in regard to interrogatories to be put to bankrupt at his examination, 1 hour,	0	6	8
Attending bankrupt's examination, 2 hours,	0	13	4
Paid Sheriff-Clerk's fee for writing bankrupt's declaration, 5 sheets,	0	5	0
Paid Bar officer,	0	2	6
Attending meeting of creditors to instruct trustee and writing minutes, 2 hours (*or according to length of minutes*),	0	13	4
	£14	4	6
Attending meeting of commissioners to audit trustee's accounts, and writing minutes, 1 hour,	0	6	8
Carry forward,	£14	11	2

	£	s	d
Brought forward,	£14	11	2
Consultation with trustee in regard to deliverances to be pronounced by him on claims of creditors, 1 hour,	0	6	8
Drawing deliverances on claims, say 2 sheets,	0	10	0
Fair copy,	0	2	0
Framing Gazette notice for dividends,	0	6	0
Ordering insertion,	0	3	4
Paid advertising, say	0	10	6
Framing advertisement of trustee's application for discharge, sheet and copy,	0	6	0
Ordering insertion in 'Edinburgh Gazette,'	0	3	4
Paid advertising, say	0	10	0
Attending meeting of creditors to consider trustee's application for discharge, and framing minutes, 1 hour,	0	6	8
Drawing petition by trustee for exoneration and discharge, 2 sheets,	0	10	0
Fair copy,	0	2	0
Lodging same,	0	1	0
Attendance, decree of exoneration and discharge pronounced,	0	3	6
Paid Sheriff-Clerk's fees,	0	6	8
Ordering and taking out extract,	0	3	6
Attending at Sheriff-Clerk's office getting up trustee's bond of caution,	0	6	8
	£19	9	0

II. *Estimate of Expenses of winding up a Sequestration by Deed of Arrangement.*

	£	s	d
Amount of Expenses till first meeting from previous estimate,	£7	14	2
Drawing report of resolution to Sheriff, 1 sheet,	0	5	0
Fair copy,	0	1	0
Drawing petition for sist of sequestration, 2 sheets,	0	10	0
Fair copy,	0	2	0
Agency obtaining deliverance,	0	3	6
Paid Sheriff-Clerk's fees,	0	1	0
Meeting receiving instructions and information to prepare deed of arrangement,	,,	,,	,,
Drawing deed, 6 sheets,	2	8	0
Extending same,	0	12	0
Attendance at execution of same,	0	10	0
Agency lodging same with Sheriff-Clerk,	0	1	0
Procuring deliverance approving of same, and declaring sequestration at an end,	0	3	6
Paid Sheriff-Clerk's fees of deliverance,	0	2	6
Agency ordering extract, or certified copy of discharge,	0	3	6
Paid Sheriff-Clerk's fees therefor,	0	2	0
Writing to Edinburgh agent, with same, in order to get it marked on registers,	0	3	4
Paid his fee therefor,	0	6	8
Paid Sheriff-Clerk's fees for recording deed of arrangement, say	1	0	0
Paid fee to Registrar of Sequestrations,	0	1	0
Paid fee to Registrar of Inhibitions,	0	1	0
	£14	11	2

III. *Estimate of Expenses of carrying through a Composition Contract; the offer being made at second meeting of creditors.*

Amount of expenses till second meeting from previous estimate,	£14	4	6
Framing advertisement of offer of composition, 1 sheet and copy,	0	6	0
Ordering insertion in 'Edinburgh Gazette,'	0	3	4
Paid advertising, say	0	10	6
Attending meeting of creditors, bankrupt's offer of composition accepted, and drawing minutes, 1 hour, 2 sheets,	0	10	0
Attending meeting of commissioners to audit trustee's accounts, say 1 hour,	0	6	8
Drawing bond of caution for composition, 3 sheets,	1	4	0
Clerk extending, 6s.; attendance at execution, 6s. 8d.,	0	12	8
Attendance, deliverance approving of composition pronounced,	0	3	6
Attendance, declaration made by bankrupt, 1 hour,	0	6	8
Attendance when decree discharging bankrupt pronounced,	0	3	6
Paid recording bond of caution for composition,	0	6	0
Ordering and taking out extract discharge,	0	3	6
Ordering and taking out abbreviate of deliverance,	0	3	6
Paid Sheriff-Clerk's fees, say,	0	17	8
Paid fees of recording to Registrar of Sequestrations,	0	1	0
Paid fees of recording to Registrar of Inhibitions,	0	1	0
Transmitting extract discharge to accountant, post 4d.,	0	3	8
	£20	7	8

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